

**STATE ENVIRONMENTAL COMMISSION**

**Meeting of September 11, 2002**

Nevada Division of Wildlife

Reno, Nevada

Adopted Minutes

(as of the November 19, 2002 hearing)

**MEMBERS PRESENT:**

Melvin Close, Chairman  
Alan Coyner, Vice Chairman  
Terry Crawford  
Demar Dahl  
Joseph L. Johnson  
Richard Reavis  
Joey A. Villaflor

**MEMBERS ABSENT:**

Mark Doppe  
Paul Iverson  
Steve Robinson  
Hugh Ricci

**Staff Present:**

Deputy Attorney General Susan Gray, Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order. He noted that the agenda had been properly noticed in compliance with the Nevada Open Meeting Law.

**Agenda Item I. Moment of Silent Reflection in Memory of the Victims of September 11, 2001.**

Chairman Close asked everyone to take a moment of reflection to remember the events of September 11, 2001.

**Agenda Item II. Introduction of Newly Appointed Commissioner Richard Reavis.**

Chairman Close welcomed Richard Reavis to the Commission.

**Agenda Item III. Approval of Minutes from the December 11, 2001 and March 8, 2002 meetings.**

Chairman Close noted that the December 11, 2001 minutes had not been adopted to allow Commissioner Johnson a chance to review them.

Chairman Johnson had reviewed them and had no comment.

**Commissioner Coyner motioned to adopt the minutes from the December 11, 2001.**

**Commissioner Villaflor seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to the minutes from the March 8, 2002 meeting.

Commissioner Coyner stated that he would like clarification. On page 28 of 48 Commissioner Johnson indicated there was 100 hours of fuel oil and in the next paragraph it says, "so that one had a limitation of 100 dollars on it." He stated it should be 100 hours instead of 100 dollars.

Also on page 29 of 48 the name Mine Services was used interchangeably with Mine Safety. He stated he thought the actual name is Mine Services. There was confusion on who was going to accept responsibility for the FOAV. At one point it says that Mine Services would accept it. At another point Commissioner Ricci asked, "Since Graymont Western accepted the responsibility." His concern was for the future on a future citation and the multiplier effect, that we have the right company. He asked Mr. Yamada to make sure that's clear for the record.

Mike Yamada, Supervisor, Bureau of Air Pollution Control, stated it was supposed to be Mine Services.

**Commissioner Johnson motioned to adopt the minutes of the March 8, 2002 meeting as amended.**

**Commissioner Dahl seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item IV. Water Quality Awards of Achievement**

Tom Porta introduced himself as being with the Bureau of Water Quality Planning. He stated while it's important today that we remember those victims of September 11<sup>th</sup>, I believe it's equally important that we look towards our future and in doing so we honor those fallen Americans. I'm very excited and happy to be here today to introduce to you four outstanding high school students and one teacher.

On October 18<sup>th</sup> this year, we'll mark the 30<sup>th</sup> anniversary of the Clean Water Act. As a part of that significant milestone, four high school students and one teacher from each state have been chosen to participate in a summit in Washington D.C. America's Clean Water Foundation and the Smithsonian Environmental Research Center are sponsoring this summit. Delegates from each state must complete a project on clean water issues and exhibit the information at a watershed fair during the summit. A panel of experts will evaluate the State's exhibits and recognize those states for their exceptional content, presentation and originality. The three-day summit will also include a series of educational sessions and technical and policy issues concerning watershed protection. Nevada's students and teachers were selected based on their interest and enthusiasm for Science and for their involvement in local watershed issues. At this time I'd like to introduce Sue Moreda, our teacher delegate from Dayton High School. She will give you a brief overview of their project and introduce the students.

Sue Moreda stated this has been quite an honor for the four students and myself. We're from different regions in Nevada and we've worked throughout the summer. We started in July with our first meetings. The kids and I are starting to get to know each other pretty well. We're coming together as a team and we're very proud to represent Nevada. We do have a large display that we're working on. It should take up a couple of six-foot tables. It will include teaching about the watershed we've chosen. It's going to have some interaction stuff on the other table where the people who've viewed our display will hopefully get a chance to see how much they've learned when they move to the next table. That's what we're working on.

She stated that she would call the students up one at a time. She called upon Greg Bryant from Mineral County High School.

Greg Bryant introduced himself. He stated I am a senior this year. I am the student body president. I'm currently working on my Eagle Scout rank in the Boy Scouts of America. Water interests me a lot. Politics along with it. My dad is the County Commissioner of Mineral County. I'm kind of following the footsteps.

It runs in the family. It is very sad what is happening to the Walker basin watershed. I just thought we could help it out by doing something.

Ms. Moreda called upon Dylan Conlin from Fernley High School.

Dylan Conlin stated I'm a senior at Fernley High School and I'm involved in activities like academic team. I'm also in the chess club. I'm really interested in Science and water and I thought it would just be really interesting to learn about different water issues in Nevada and what we can do to teach others about them.

Ms. Moreda called upon Ann Larquier from Douglas High School.

Ann Larquier stated I'm a junior at Douglas High School. I feel really honored to be chosen to be part of the Nevada watershed team that's going back to Washington D.C. I'm glad because I'm really interested in natural resources and hoping in my college studies to maybe go into some kind of field like that. So this would be a great help getting into that department. And I'm just really honored to be able to work with all these fine people. Thank you.

Ms. Moreda stated all of us are very excited today to have Jim Wilburger with us. It's the first time the other students have met him. He attends Las Vegas Academy of Performing Arts and International Studies.

Jim Wilburger introduced himself. He stated I'm from Las Vegas and I attend the Las Vegas Academy where my major is piano. But I have always been interested in Science and it's always been my favorite subject. Especially all the molecular stuff. I've always been really interested in water and its role in life. It's obviously pretty important. I thought it would be really cool to just learn about everything that's going on with water in Nevada and especially since I'll be going there I can learn about water all around the whole nation. So I'm really excited about doing everything and thank you.

Ms. Moreda stated in the very beginning Mr. Porta informed the students and I about important issues on each of the watersheds in Nevada. We spent some time talking about each one and which one we wanted to concentrate on. Because of terminal lakes being quite rare and unusual that one received the most votes. We did some value voting where we each had a certain amount of points and we put it on either one watershed or several and at the end of the value voting Walker Basin watershed came up with the most votes. But there are three components to our assignment. In addition to the physical display, we also have a term paper, a research paper that's due and we have a radio spot that we need to do. So, since Jim is separated from us by distance and he wasn't going to be able to go on all the field trips because we have been to portions of the Walker Basin watershed, I asked him to please work on the Lake Mead watershed for the radio spot. He's done a fine job with that. A few days ago he read it a couple of times over the phone and he has helped us with our display also with some of the parts. And we had a conference call with him before. We want to thank the Nevada Division of Environmental Protection because they've been so supportive. You can tell that they want us to succeed. You can tell they are there for us and anything that we say we need they're always wanting to help. So, thank you.

Mr. Porta stated well that was just the beginning. The students and Sue will be back after their conference to report back to you on their findings of other issues on the watershed and how they did at the summit. So we appreciate your time today and look forward to seeing you again.

Chairman Close stated it's a very impressive undertaking you have chosen for yourselves. Water is important in Nevada, obviously. We're a desert state and we need water. We need to protect it and watch out for it very carefully and to get students involved at this time in their lives will carry on for the rest of their life and will make them always aware of what has to be done to protect our watersheds. Very good. Very impressive group. Thank you.

Chairman Close moved to **Agenda Item V. Regulatory Petitions, Petition 2002-08.**

**(Petition 2002-08 (LCB R102-02))** is a permanent amendment to NAC 445B.737 to 445B.774, the vehicle emission control program. The amendments tighten the heavy-duty motor vehicle opacity standards; requires equipment to have the built-in capacity to adjust for altitude and ambient conditions; increases the number of model years to which the standards are applicable; exempts those engine families that have been exempted by California and requires vehicle owners to replace missing emission control labels. The amendments also clarify wavier provisions and align the heavy-duty gasoline vehicle tampering provisions with the existing Nevada annual emission program. Amended is NAC 445B.739, 445B.7665, 445B.767, 445B.768, and 445B.774. NAC 445B.7655 is repealed.)

Adele Malone introduced herself as working with the Bureau of Air Quality Planning in the Division of Environmental Protection. She stated this morning I'm presenting the proposed amendments to NAC 445B.737 to 774, Petition 2002-08, the heavy-duty motor vehicle opacity testing program. You should have a fresh copy of the proposed amendments in front of you. We just got it back from LCB from their second review on Monday. That's why it's not in your package there. There are a few differences from the one that's in your package, but that's just differences in making the language clearer. We've looked at the second LCB review that you now have and the content is not changed from what we submitted. What I'd like to do is go through the new proposed language that you have and go through it sequentially and I'll follow the version that you've been handed. I'll identify the sections in the handout that differ from the version that's in your package and basically I'll summarize the changes and if you would like more detail or if you have questions, please feel free to interrupt me. These amendments bring Nevada's heavy-duty vehicle opacity testing program into better alignment with U.S. EPA guidance and with other states' programs nationwide, including that of California. They insure a more reliable and credible program in Nevada and in addition there are some errors that we're correcting and some ambiguities that we're clearing up in the NAC.

The first section there is new language. It deals with emission control labels on diesel engines and it requires the owners of heavy-duty diesel engines or vehicles to replace the emission control label if it's found to be missing during an inspection. That label provides the DMV inspection team with the model year of the engine. This is necessary so that they know which standard to apply. If the vehicle is stopped again after 30 days and the label is still missing, the vehicle will be subject to the most stringent standard, which is the 40 percent standard. That applies to 1991 and newer vehicles, unless it is obvious to the inspector that the engine is older than 1991.

The next section, Section 2, page 2 simply makes the definition sections applicable to the new language that I just described.

Section 3 revises the definition of certification level to include 1970 and newer model years instead of 1977 and newer. This relates to another change that we'll see in Section 6.

Section 4 is something that was not in the package that you received in the mail. This change just simply makes the emission control label part of the diesel emission control system and not the gasoline emission control system. It's a matter of definition. This change follows from another change that we'll go over in Section 8.

Section 5 is a grammatical change.

Section 6 has the main substantive changes. Subsection 1 is the section that tightens the opacity standards and expands the model years covered by the program back to 1970. Currently the program covers 1977 and newer model years. This backs it down to 1970 and newer. In Subsection 1 we have proposed to replace the existing 70 percent across-the-board standard with three different model year groupings: 1991 and newer vehicles will be subject to a 40 percent opacity standard; 1977 through 1990 will be subject to 55 percent; 1970 to 1976 will be subject to the 70 percent standard. Subsection 2 on page 3 there was written in response to public workshop comments and was negotiated with the Nevada Motor Transport Association. What it does is provide that a

vehicle will not be cited until the opacity reading is at least one full percentage point greater than the relevant standard and this was put into account for equipment variability.

Section 3 looks rather large, but basically it just deals with equipment and it requires that by July 1<sup>st</sup> of 2003 only opacity meters that have a built-in capability to adjust readings to ambient conditions be used in the program. This will provide confidence in the program and more credibility. There is a transition period between when the amendments become effective and July 1, 2003 that will allow the old equipment to be used with the old standard. But we should be getting new equipment and as the new equipment begins to be used the new standards will be effective and then in July 2003 only the new meters will be used with the new standards.

Commissioner Johnson asked it's my understanding that IFC heard the request for the equipment yesterday and that they approved that on Monday?

Ms. Malone answered that's right. DMV's Compliance Enforcement Division requested that they be allowed to spend money for five new opacity meters with this built-in capability and that was approved this week. So they're going forward with buying the equipment.

Section 4, there's a group of engine families that have already been identified by California's Air Resources Board and these are engine families that will not meet the 40 or 55 percent opacity standards that we're proposing and that California has in their program even though they're in good running condition and tuned to the manufacturer's specifications. So they have to be dealt with differently. In this subsection we've proposed to recognize these engine families that California has identified and not subject them to our standards. Instead we propose to apply less stringent standards that California has identified with an additional 5 percent allowance. That 5 percent allowance was requested by Nevada DMV based on their field experience.

Chairman Close asked can you tell us what percent of the diesel engines fall within that category? Are there any numbers on that at all?

Ms. Malone answered California has exempted three engine manufacturers and one after-market parts manufacturer have applied for exemptions. Eleven engine families have been exempted and have less stringent standards applied and the standards that California has identified are 70 and 75 percent standards for these engine families. I'm not sure what percentage of engine families that is. My impression is that it's not a large percent.

Chairman Close asked why are they being exempted? They just can't build an engine that meets the standard?

Ms. Malone explained they're basically model years that are in the late '80's and 1990. When they were manufactured they didn't build them for opacity standards. Even when they're in tune and running according to the manufacturer's specifications they emit more than the 40 or 55 percent standards.

Chairman Close asked so then these are existing engines that are presently operating and we're not talking about a family of engines that are being constructed today or manufactured today?

Ms. Malone answered that's correct. These are engines that are either 1991 or older, mainly in the late '80's already existing. Anything new now will certainly meet a 40 percent standard and I'm sure would be less than 40 percent.

Commissioner Reavis stated I'm not particularly fond of using other states' regulations by reference in Nevada regulations. If someone wanted a copy of the California section that this refers to, could they come to your office and get copies of it?

Ms. Malone answered they certainly could. We could make it available in a number of ways. I do have a copy of it with me if you would like to see that.

Commissioner Reavis stated some time when we're breaking I would like to see it.

Ms. Malone stated okay. I'll move on to Section 7 which is on page 4. The change here is a correction to the section references in the SAE test procedures and we are also removing a definition, the phrase "test opacity" which is no longer used in the regulation.

Section 8, the changes are found in Subsection 2, which is on your page 5. This subsection deals with heavy-duty gasoline anti-tampering inspection. This is the random roadside program that we're in at the moment. These changes were made to address a DMV concern and what the changes do are to align the heavy-duty gasoline vehicle visual inspection that's performed at the random roadside with the visual inspection that's done on the same vehicles in the smog check program. So, basically we're providing a consistency between the random roadside program and the smog check program on the heavy-duty gasoline vehicles.

Section 9 is just a grammatical change.

Commissioner Johnson stated I have a question on Section 9 and it doesn't refer to anything that we're proposing new, but I simply would like some comment about the process by which a violation is repaired. It's my understanding that you can either do the repair or and/or get a subsequent inspection. But after you do the repair you're not required to do an inspection?

Ms. Malone explained after you do a repair you're required to submit evidence that the repair has been made, which I would presume would be receipts from the parts, if you went to a shop, the receipts.

Commissioner Johnson stated in Section 2 the only opportunity for the director to say that whatever however minor the repair that's claimed would be inadequate would be simply that if it were fraudulent? Otherwise if I replace an air filter and say here's my receipt for the air filter for \$25, the repair is complete, is there a point of challenge other than that if this vehicle gets caught in another smoke inspection?

Ms. Malone stated I would think as a matter of policy the DMV could require vehicles to be brought back and smog checked or could require if it's an out-of-state vehicle that they submit the results of a smog check to them.

Commissioner Johnson stated in Section 9(1)(b) it says submitting the vehicle to a post-repair test or a post-repair inspection, it seems that it's ambiguous to me that it's not required that there is a post-inspection.

Ms. Malone stated I'm not sure. Can you tell me where to look? I'm not finding what you've got.

Commissioner Johnson stated on page 6, right at the bottom. In (a) it says the receipts, you submit the receipts.

Ms. Malone stated yes.

Commissioner Johnson stated it appears that they're, if my vehicle fails a smog check of which once I drive in you have to finish, so DMV says, I have to get it rechecked. I simply can't get a tune up and a repair and I get double jeopardy. Well, we're using this method to replace requiring a station inspection, but if there's a violation we have no ability to follow up to see that other than the claim that it's repaired.

Ms. Malone stated I think the reason is because this program tests out-of-state vehicles as well as in-state vehicles and the difficulty of having an out-of-state vehicle required to come back in to have a smog check done or the requirement is not in the NAC because of the difficulty of requiring the out-of-state vehicles to come. I know DMV would like to have the vehicles required to have a smog check after the citation.

Commissioner Johnson stated I think this is an item that we should perhaps have a workshop on in the future. I don't want to try to propose any change here because we haven't thoroughly discussed it, but I think it's a point that we should consider. There's an alternative to that and that is in a later section to give the director the authority to evaluate the evidence that's presented. It appears to me that under the listing of the things that the director can require a follow on test is simply basically only if there was an obvious fraudulent claim, not an inadequate claim. And these items I think should be subject to a workshop and perhaps there would be a proposed language change to it.

Ms. Malone stated okay. I'll make a note of that.

Chairman Close stated on 5 it provides that a vehicle that qualifies for repairs under a warranty is not eligible for a waiver. And with what your answer to Joe's question is, how do we know that the work was ever done? If it doesn't qualify for a waiver and it has a warranty, how does the director ever know that the work has been completed if the truck never comes back into Nevada or it comes back in just intermittently?

Ms. Malone stated I don't know if there's anybody from DMV here that would know the answer. I would assume that if it qualifies under a warranty that they would submit those receipts or statement from the dealer that the repairs have been done under warranty. But that would be a matter of DMV policy and I really don't know off-hand.

Chairman Close stated and the one above that says, "The director shall deny an application for a waiver if the parts have not been installed." It's a very good point that you made that these trucks drive all over the place. We may never check again to know if the parts have been installed. I mean what enforcement activity do you think is going to be undertaken to ensure that this work is actually done? If my car is in Nevada you can check on me and I've got to go back in and make some improvement. But if he gets stopped and drives on to Arizona, how would we ever know that anything has been done?

Ms. Malone stated it's a dilemma, you're right. DMV has recognized that and I think it's worth doing a workshop and looking into further.

Chairman Close asked if a vehicle fails, does this go into a national computer that says that this vehicle has failed the test in Nevada?

Ms. Malone answered no.

Chairman Close asked how do they stop them? Are they driving along the highway and a patrolman comes up behind them and stops them?

Ms. Malone stated if it's on a freeway or an expressway, usually the DMV teams hookup with a highway patrol safety stop so when the trucks are pulled over for the safety inspection, the DMV team will do a visual inspection of the opacity and if they see a truck that they want to do a meter test on they'll ask the highway patrol to send that truck over to their station. So the truck will come over and do that. Down in Las Vegas there are teams of inspectors and peace officers in vans that actually patrol or roam the surface streets. If they see a vehicle that they would like to inspect they can stop them and pull them over. We're supposed to be getting that capability up in Washoe as well.

Commissioner Crawford stated I'm struggling with the whole thing a little bit because, and maybe I haven't my homework, the definition of a heavy-duty motor vehicle powered by a diesel engine. I'm having a little trouble framing what we're talking about here because I don't have the definition for that.

Ms. Malone stated heavy-duty starts at 8,500 lbs. gross vehicle weight rating which includes fairly small vehicles. That's the number you find on the panel of your door when you open your door. We're talking about pickups all the way up to the 80,000 lb. semis.

Commissioner Crawford asked is that defined in regulation somewhere?

Ms. Malone answered yes.

Commissioner Crawford stated I think it was mentioned earlier, but I wonder about how operators and the public in general find out whether they're in the California exemption or not. The availability of that without it being in our regulations would be make it difficult for people to know whether they were in or not.

Ms. Malone stated I don't really know how the process works, but I would assume that it would come from the manufacturers because I would assume that the manufacturers have applied for the engine family exemptions and the manufacturers would let the dealers who would let the owners know about that.

Commissioner Crawford asked is what we're setting up here for diesels above 8,500 is a program similar to the current gasoline program?

Ms. Malone answered no. This particular regulation sets up a random road-side program for testing the smoke coming out of heavy-duty diesel vehicles. The program applies to heavy-duty gasoline vehicles as well. When a heavy-duty gasoline vehicle is pulled over they are looking for a visual inspection of emission components to be sure that there has not been any tampering because it's the diesels that have more opacity and the heavy-duty gasolines don't have a lot of smoke. We're not talking about an annual smog check type of thing, but where you put up a road stop and randomly pull vehicles over to do the test. So not everybody will be subject to this, just the gross polluters that are identified while the teams are out on the road.

Commissioner Crawford stated I understand your part of the program is that people who are on the road in an official capacity who see something that looks like it might not meet opacity standards, then you get pulled over? Or is it that everybody is going to be checked and some go through and some don't?

Ms. Malone explained there are teams of inspectors that have been trained in visually estimating opacity, together with a peace officer. These teams are out on the road either at a highway stop point or in Las Vegas driving their vehicle with the test meters on the surface road and they just pull somebody over.

Commissioner Dahl asked does this apply only to Washoe and Clark County?

Ms. Malone answered the program is a statewide program. In the Reno area the team goes out towards the east, towards Elko and Ely. Down in Las Vegas I think they are so busy in Las Vegas itself that they have limited the program to Las Vegas. Basically, we have statewide authority but we only have two inspection teams in Las Vegas and one team in Reno. So they focus in the urban areas.

Commissioner Dahl asked if I have a truck that is based in Lincoln County or White Pine County that is cited for a violation, then I would have something that would require me to make the repair and it would be the same as if the truck were stationed in, or headquartered in Washoe County?

Ms. Malone answered yes, either make the repair or pay the fine or you can apply for a waiver.

Commissioner Dahl asked you don't have to make the repair, but you may be cited again?

Ms. Malone answered right.

Commissioner Dahl stated in other words if the fine were cheaper than the repair, it still wouldn't make sense to pay the fine and not do the repair.

Ms. Malone stated it's sort of a roulette wheel.

Commissioner Dahl asked if this truck were based in Idaho or Oregon where there isn't a standard, then what?

Commissioner Johnson explained if you're driving and you fail the test in Washoe County or wherever the test is, it's just like a speeding ticket. You are emitting smoke and you have violated the standard. The regulation says it's against the law or against regulation to operate the vehicle here.

Commissioner Dahl stated but this is kind of what you were talking about. Then you go back to Oregon . . .

Commissioner Johnson stated exactly. If you go back to Oregon and in some cases we have had people very minimal repair. But it's cheaper to do the repair because you don't have an inspection that follows except that if you get caught again. If you're in Idaho you're really, you have very little power to say what is an adequate repair. And so you can send in the next time you get changed an igniter or whatever, I don't know is legitimate and what isn't legitimate. But if you are periodically coming through the State you're always subject to getting caught again. But we have three teams and the overall inspection rate is very low.

Commissioner Dahl stated I've got a 1982 Freight Liner with a 400 Cummins engine in it that we haul stock water with and it smokes. So periodically I may have that on the highway going from one location to another. Even if it's primarily used off-highway, is it still subject to it?

Ms. Malone explained when it's on the highway it is subject to the opacity regulation. The second fine is substantially higher than the first fine also going from \$850 to \$1,200 or \$1,250 for the second fine. Going back to the engine family exemptions, Colleen suggested that I make the point that it is up to the DMV inspectors to know which engine families are exempt and they will have a list like this so that if they come across that engine family they would be able to exempt it.

Commissioner Coyner asked can you give me any data on numbers of citations to this point, per month, per day, how effective the program is?

Ms. Malone answered I don't have those numbers in front of me.

Daryl Capurro answered the DMV has been collecting those. They're charged with the enforcement of it while the Commission has been charged with setting the standards.

Ms. Malone stated I think there have been like maybe 1,000 citations or 1,000 tests and out of that maybe 600 citations per year. Something around that.

Mr. Capurro stated and 12,000 sightings. The actual stops have been far less than that because they only stop those that they consider by their trained eye might be exceeding the standard and of those, about 25 or 30 percent are failing.

Commissioner Johnson stated the numbers that I had were from the 342 study in the Las Vegas Valley and I think that the actual fail rate of vehicles that they observed was around 2 percent of the vehicles that they stopped, was like 35 percent. So they're pretty astute in their evaluation of what constitutes a violation at least at the top-end of the thing. The actual numbers I'm curious to that also to see the adequacy of the program. We have basically three teams. Are they full time? What are their exposure rate and this sort of thing. I think another interesting number I think DMV casually had said that almost everyone submits the repair rather than pay the fine.

Ms. Malone stated yes. I think I have the numbers with me.

Commissioner Johnson stated which is what we would like to see.

Ms. Malone stated but it would take me a while to dig them out. I can do that and give it to you after a while if you would like.

Chairman Close stated it would seem like a very modest program. We probably have more than 1,000 trucks going through Las Vegas in a day. I think this is a drop-in-the-bucket so far as enforcement is concerned with the limited number of people that we have to make the stops and the inspections. I think it's a good thing to go forward with it, and I think we should be doing it, but I'm dismayed that it's such a modest program.

Ms. Malone stated actually the vehicles that are on the highway, the long-haul type of vehicles are fairly clean and the inspection teams have been out there and they won't even have to pull over more than a handful a day. Where they really do a more effective job is on the surface streets of the town, near fleet yards, and they've been doing a very effective job.

Commissioner Dahl asked this only applies to trucks on the road, it doesn't apply to stationary engines?

Ms. Malone answered correct. We were on Section 10 which is on your page 7. The first change in Subsection 1 is grammatical. Subsection 2 has a technical correction in it. Subsection 6 is the change there and what it does is add a sentence saying that the waiver is valid for one year after it is issued. The waiver provision did not have a limitation prior to this suggestion.

Commissioner Dahl asked is there a charge for the waiver?

Ms. Malone answered the waiver requires \$1,000 expense in trying to repair the vehicle and bring it into standard if you do it at a shop or \$750 if you do it on your own. There's no fee for the waiver itself. But you do have to show that you've tried to repair it and spent a certain amount of money at it. There is a section of text that's being repealed because it's not relevant anymore. It dealt with activity prior to January 1<sup>st</sup> of 1997. Again, these changes are important to Nevada's heavy-duty motor vehicle program. They will align our standards and model year coverage more with what EPA recommends and with what our neighboring states are doing. The requirement for the equipment with the built-in capability to adjust opacity readings to ambient conditions will assure the reliability of the readings and give more credibility to the program.

In developing the amendments we worked with the State advisory committee on the control of emissions for motor vehicles. That's the I & M committee. We worked with the subcommittee on heavy-duty diesel emission control strategies which is an I & M subcommittee. There are representatives of DEP, DMV, Agriculture, Transportation, the two counties, Nevada Motor Transport Association and the SEC on those committees. We worked extensively with the Nevada Motor Transport Association and with Compliance and Enforcement Division and Management Services and Programs Division of DMV. We held two public workshops: one in Las Vegas with seven people attending, one in Reno with six attending. There were no written comments submitted. We have made several revisions as the result of the public workshops including adding that section that says the citation will not be issued until the opacity reading is at least 1 full percentage point over the standard adding the 5 percent allowance to the less stringent standards identified by California for the engine families that exceed the standards even when they are in good condition and better aligning the heavy-duty gasoline visual inspection for the random roadside program with the smog check program. In closing we would just recommend that the amendments be adopted as proposed.

Commissioner Coyner stated the brackets on the years start 1991 newer and I'm in Section 6(1). Then 1977, 1990 and then 1970 to 1976 and the percentages are appropriate to the years. What happens prior to 1970?

Ms. Malone stated the vehicles are not subject to a standard.

Commissioner Coyner stated I don't know how that jives with Section 1(2) which calls out for a 1990 or older model year engine. The vehicle is subject to the applicable standard. But you just said if it was older than 1970 it wasn't applicable.

Ms. Malone stated right.

Commissioner Coyner stated maybe one supercedes the other.

Ms. Malone stated the applicable standards are what are in b & c for 1970 to '76 and '77 to '90. If it's older than '70 there is no applicable standard.

Chairman Close called for further questions. There were none. He called upon Daryl Capurro.

Daryl Capurro introduced himself as managing director of the Nevada Motor Transport Association. He stated it's the industry association that I've represented for about 33-1/2 years now. I've had a lot of experience in this program. Many of you I think will remember we actually were one of first states along with California, and actually California suspended their program, to begin a random roadside inspection program. Ours is probably if not the oldest, the second oldest program in the country. Right now it's my belief that there are only 16 states. There may have been some that have added here recently in that. We're on the cutting edge of emission testing for diesel powered vehicles. I would like to see it expanded to other heavy-duty vehicles too. Those that are powered by alternative-fueled vehicles, but that's an issue for the legislature to determine.

I would like to thank Adele and her staff and your people for working on this. This has probably had the most extensive review of any regulation that I've been involved with and I really appreciate staff's wanting to find out exactly what can be done and what can't be done. Our program has been probably notable because of the fact that the State tried to crawl before they did the 100 yard dash. In other words, it's been a prudent program and we have had a standard that we were able to test over the years to see whether or not those vehicles, whether we're properly covering the vehicles. Obviously, the EPA-recommended standard came in much after our program went into effect in that end, but we've had time enough to collect the information necessary to make the changes that are embodied in this regulation. I will tell you this, in reviewing the numbers that DMV has collected on this, particularly in the Las Vegas area what we're finding is the great bulk of the vehicles are very clean and you have that element out there that's very dirty. I'm talking about readings of 90 and above. I even saw one that was 99. I mean you can't get any worse than that. So, we're in agreement; these vehicles need to be taken off the road.

And as a side, I'm from a ranching family too so I understand it, but the only vehicles that are worse maintained than rancher vehicles are government vehicles believe it or not. I'm not sure what the reasons are. The government has a tendency to exempt themselves from the testing procedure. I would hope that would change in a lot of ways because in all honesty that's what we're finding. My assistant, Ray got behind a sweeper unit today and it was smoking terribly and when he passed it was an Airport Authority vehicle. The other thing that we're finding is if they're on the freeways, if they're coming from other states, they're probably very clean because they've passed through states which have requirements that up to this point have been actually more stringent than our own.

Our program, although you may think it's modest, it's actually ahead of the curve. We are now prepared to adopt the standards that the Environmental Protection Agency has recommended that appear appropriate with respect to Nevada at this point in time, particularly because of the section in here that says that they have to use the new equipment to test and do it. The reason is under the EPA guidelines there is an allowance for ambient standards, not just altitude, which in Nevada we have a lot of, but also temperature conditions and other things that apply. Believe it or not, that can raise that number by five points or more. So you have to have some method in which to adjust those readings to account for the altitude. The new machines that they are going to purchase and have gotten, which we have also been pushing for, they have been allowed to spend the money to acquire those and I would presume that would be done rather quickly. In the meantime they've been using one of the manufacturer's machines for about probably six months now I would guess as a test program in Las Vegas. So we've had a chance to look at the results and how that ambient standard is working on an automatic

basis. The alternative would be to have the inspector try to use mathematics and believe me that part of the regulation is three pages long and I don't think anybody sitting here could actually understand them.

But the simple fact of the matter is, I think we've come a long ways with this program. We are in full support of the provisions that are in this here and we'd be happy to participate in any public program or public look at what the standards are. In answer to the question about how many vehicles, how many engine families are exempted, it's very, very small. I would say to you it's about probably 5 percent or less because it is older engine families. Since 1991 those have not, there are none on the '91 list that I'm aware of, '91 or newer.

Part of the reason our program is different than the gasoline program is that the pollutants that are associated with trucks, heavy-duty trucks particularly in the diesel category are not the same that you have in a gasoline-powered vehicle. Hydrocarbons, carbon monoxide are a bigger problem, far bigger problem with cars than they are with diesels because of the way in which diesel is ignited in a diesel engine. There were a number of questions that came up. Subsection 2 of Section 6 was put in at our request and in talking with staff to account for every machine has a variance to it and they'll say either 1 percent plus or minus or 2 percent. This is an attempt to make sure that if you cite the guy he's going to be over and we know it's over. So we would heavily support that.

The question regarding the post-repair test procedure, because this is a random program, and understand the gasoline program applies to every Nevada vehicle only. We do not test other states' vehicles in our program nor do they test Nevada's when Nevada vehicles are traveling through there. But in the diesel category, that vehicle is subject to testing in every state that has a program through which they travel. So there is a difference in the type of program and it's aimed at the particular pollutants that are endemic to the diesel engine. If you have a vehicle that is smoking heavily it has problems with NOX and with other pollutants. If you have a vehicle that is clean, those levels are either nonexistent or very low. There's a real good correlation there. Again, I would indicate to you that it's been a real privilege working with Adele on this project and that Nevada is coming into line. I think we've been more methodical than any other state in developing information that tells us that this is the time to do it. The trucking industry wants the polluter off the highway. They cause problems for all of those people who are good citizens and who try to make their equipment work properly because if that equipment isn't tuned properly, that costs us money and in this day and age that's a big item.

Commissioner Coyner asked do you know whether or not government vehicles are exempt?

Mr. Capurro answered I don't know whether they are exempt in the random roadside test. It was kind of a shot on my part. But in the gasoline test one, yes they are exempted and they shouldn't be.

Commissioner Coyner stated I guess I'll bring Adele back up to answer that question. Do you know?

Ms. Malone answered they're not exempt.

Mr. Capurro stated they should not be exempted from any program to tell you the truth.

Commissioner Coyner stated I agree. The model year engines, diesel engines you take them apart, put them back together, put on new heads, put a new block in. Where does the model year run? Does it run with the block? How do you determine that that engine after it has been torn apart and repaired and parts put back in is now a model year what engine?

Mr. Capurro stated it's the same thing as the determination for automobiles and that is the model year of the vehicle itself. It is possible to remove the engine and replace the engine with a newer model engine and it would still be, if it's a 1985 Rio, then it's still a 1985 Rio. But the problem that you have is that's not likely to happen because all engines and one of the reasons for these certain engine families is they were all produced using different technologies regarding fuel injection and regarding the firing sequence, regarding other issues that may cause one vehicle to smoke more at the beginning and clean out or that there is a problem involved

like the California engines. But essentially it's the same rule that's set for cars. If it's a 1985 Chevrolet Nomad, it's a 1985 Chevrolet Nomad and it's a 1985 Rio.

Commissioner Coyner asked so you don't see a problem?

Mr. Capurro answered no sir.

Commissioner Dahl stated I think that my '82 Freightliner has a '92 or a '93 400 Cummins engine. So it wouldn't be subject to the higher standard then if it were on the highway. Is that right?

Mr. Capurro stated maybe I may have to amend what I said. If you go back to page 1, Section 1 of this thing here, it requires the emission control label be on the engine. Now they're probably testing from that. I have to back up then, if they do stop that, if that emission label is on there and it says it's a 1991, then it better meet a 40 standard. So that is a difference. That's new language that's been added. Is that correct?

Ms. Malone answered yes. The standard is applicable to the engine's model year.

Mr. Capurro stated and if they have no label on it, they're going to be subject to that 40 standard. I think that's a good improvement to what we're doing.

Commissioner Coyner stated just to clarify, the label is what dictates the engine, not the model year of the truck that it's sitting in?

Ms. Malone answered yes. The standard is applied according to the model year of the engine. That's why the emission control label on the engine is so important, so you can identify what model year the engine itself is.

Chairman Close asked who puts the label on?

Ms. Malone answered the manufacturer and if it's missing you can get it from the dealer.

Chairman Close asked it's a metal thing of some type attached to the engine?

Mr. Capurro answered yes sir.

Chairman Close asked it's not just a piece of paper or tape or anything like that?

Mr. Capurro answered no sir. It's a metal plate. It's actually bolted on to the end of the block.

Ms. Malone stated it should be something durable.

Chairman Close called for further public comment. There was none. He declared the public meeting closed. He called for discussion among the Commission members.

Commissioner Johnson stated I would like to compliment staff and the representatives from the Motor Transport Industry and the other people who were involved in that. I served on a subcommittee as part of an additional duty I guess and appreciated the input. Singularly, this is for opacity I think that for diesel emission control and impact on our society and some of my comments that are sometimes random and incoherent that we need also to continue the effort on diesel emission controls. But, that's a subject for another process in time and there are very significant improvements being made in the new series of engines from '92 and the 2007 series that we will be seeing. The real problem is the off-road diesel that we have yet to fully address and control and we need to address that in a timely fashion. Again, just thank you all for a good effort.

Chairman Close called for further questions or comments. There were none. He called for a motion.

**Commissioner Johnson moved for adoption including the version of LCB File No. R102-02 with the amendments being made in the last presentation.**

**Commissioner Reavis seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item V. Regulatory Petitions, Petition 2002-07.**

**(Petition 2002-07 (LCB R037-02)** is a permanent amendment to NAC 445A.286 to 445A.292, the Water Pollution Control Treatment Works to update terminology. The regulation amends NAC 445A.289 and 445A.90 by removing the Grade V wastewater treatment operator requirements. Fees for Operator in Training in NAC 445A.287 are repealed and fees for late renewal is reduced. The reference to the Nevada Water Pollution Control Association is deleted and substituted with the term “designee”. The wastewater plant classification for the purpose of wastewater treatment operator certification is clarified. The requirements for wastewater facilities are amended to clarify the criteria for classification of operators. NAC 445A.291 “Plants for sewage treatment: certification of persons in responsible charge” is repealed.)

Leo Drozdoff introduced himself as chief of the Bureau of Water Pollution Control. He stated the petition before you today deals with the regulations which govern the certification of wastewater operator professionals. The regulations were first developed a decade ago and they’re largely the same regulations in place today. There were some minor changes to them seven years ago in regard to some fee amendments. But I thought that since the regulations sort of pre-date most of the members of the Commission, it may be helpful to provide a brief background as to how these were developed and I think that background may give you a little bit of context in terms of the petition here today.

The states across the country starting about 20 years ago began initiatives initially to certify wastewater treatment plant professionals. The basis for this initiative was the fact that the federal, state, and local governments were spending millions of dollars on wastewater infrastructure for treatment plants. They were spending hundreds of thousands if not millions of dollars on the monitoring of these plants and making sure that they were in compliance and there was a very real conclusion drawn that the people running these facilities should have some core level of competencies.

So, starting about 20 years ago states across the country began developing what are called mandatory operator certification programs. In Nevada we had a voluntary program starting in the ‘70’s. That program was operated by an organization called the Nevada Water Pollution Control Association. It’s sort of a trade group of wastewater professionals. That group has subsequently changed its name to the Nevada Water Environment Association. But it was essentially a well-run voluntary certification program that basically enabled wastewater professionals to have some recognition, something over and above their job that they can take with them to other jobs or just feel good about the job they’re doing.

The 1991 Nevada legislature enacted a mandatory certification law. During that process the legislature basically gave most of the responsibility for developing the program to the State Environmental Commission. They said, “Okay, we want mandatory certification, but we’ll leave it up to the State Environmental Commission to develop regulations.” They also said that you know this voluntary program that’s run by the Nevada Water Pollution Control Authority is pretty good. Don’t throw the baby out with the bath water and sort of create a new State program just to create one. Do the best you can to incorporate the existing voluntary program into the State program. That’s what the regulations developed in ’92 did. As you’ll see when we go through them, there are a couple of specific references to the Nevada Water Pollution Control Association. We’ve worked really hard to not create a bureaucratic program. But because we’ve worked hard not to create this sort of bureaucratic program, there are some changes that we feel are appropriate today.

The petition before you today falls into three different categories. The most significant has to do with the elimination of the Grade V certification. The second category falls into clarifying the terms for waste water professionals out at a wastewater treatment plant. I was trying to make that a little bit more streamlined. And third is just a general cleanup of the regulations because they've been in place since '92.

When the voluntary program was developed it was modeled after the California program. The California program had and still has five levels of certification. The California program also certifies well over 10,000 operators. In Nevada we have probably about 400. Through the years most states, 43 in particular, have become members of a trade organization called the Association Boards of Certification or ABC. This is basically a national testing program. It's been recognized by the federal Environmental Protection Agency, and 43 states operate or have reciprocity agreements with each other through ABC. Nevada is one of those. The ABC program has four levels of testing. The Nevada program is unique because we have five levels of testing and we are members of ABC. What that means in practice is we have a reciprocity agreement with 43 states for Grades I through IV, for Grade V we're essentially on our own. There are four states that have Grade V testing requirements: California, Massachusetts, Michigan and Nevada. Through the years what we have found is we, NDEP and the Nevada Water Environment Association, in order to sort of maintain this Grade V testing we had to develop tests on our own and I'm not an operator. As I said, we rely a lot on the Nevada Water Environment Association. Some of them are operators, very few are Grade V operators. And what we started to find was that it was just sort of a make work exercise. There really wasn't a whole lot of value added. I mean I don't want to disparage the work we did and the work that other volunteers did, but it was a volunteer effort and we struggled with it the best we can but I would definitely characterize it as a process that was limited in terms of value added.

Additionally, this became a real hindrance to the larger communities throughout the state, specifically in the Las Vegas and Reno area where this highest level of certification is required to run a wastewater treatment plant. What was happening was if a facility wanted to hire somebody from out- of-state who was qualified and can run a very large plant somewhere else, a condition of their approval would be that they would have to take and pass this Nevada Grade V certification. Now, somebody with a livelihood, that's something really important to consider. A lot of people just said, "Well thanks, but no thanks." In addition to our own findings that this process wasn't value added, we began hearing from the large municipalities, specifically Las Vegas, Clark County, Henderson, Reno, and Sparks and Washoe County that is there something that we can do. That is really when we began looking at our certification regulations in earnest.

To finish up with the background, we brought these regulations to public workshops in Las Vegas on March 7<sup>th</sup> and in Carson City on March 4<sup>th</sup>. They were sparsely attended. We did not receive any verbal or written comments. As part of getting ready for this public hearing, we received one comment from Clark County Comprehensive Planning inquiring about the specifics of the Grade V elimination and we answered that and we received a satisfactory response back that okay the question has been answered.

So with that as a very brief background, what I thought I would do is just walk through the regulation changes. The one item I did hand out was a newsletter. In addition to the workshops the Nevada Water Environment Association Certification Board sends out a newsletter twice a year. The newsletter before you is sent to almost 500 operators and interest people, like I said about 400 operators licensed throughout the State making them aware of the process and what we were doing. The only comments we received were positive that yes, this makes sense.

I would characterize the regulation changes in terms of just general cleanup, specifying the types of people we're certifying and the Grade V elimination. Starting on Page 1, Section 1, currently the definition is open. It says, "Any other plant other than a package plant of a capacity of 5,000 gallons, any other plant with a capacity of 10,000 gallons per day or less requires a certified operator." That has always meant a septic system. A larger septic system does have some bare essentials that require a Grade I or some level of operator competency. All we did with this was kind of made it a little bit clearer.

Section 2 – As I talked about earlier, when the regulations were first developed they were quite specific in terms of supervisor, foreman shift supervisor, and shift operator. The simple fact of the matter is wastewater treatment plants may or may not use those terms. We really tried to get away from that as much as possible. Where we do use the term “supervisor” we clarify that or define it by saying that’s a person in responsible charge, as you’ll see later. So, we just moved away from these specific terms and are dealing again with people in responsible charge of a wastewater treatment plant.

Item 2 – This regulation stems from direction from the legislature to include the Nevada Water Pollution Control Association. We still do that, but as I said the Nevada Water Pollution Control Association has changed its name to Nevada Water Environment Association. The Division of Environmental Protection doesn’t want to be in a position of having to come back to this group if that group changes its name. So, again, we still operate with the Nevada Water Environment Association, we’ve just basically made the term more generic and called “an approved designee.”

On page 2, Section 5, what we’ve done here is we’ve tried to be a little bit more charitable in terms of late fees and a little bit clearer. The way it works is these certificates expire every two years and once you pass your certification, that is if you don’t go take a higher level exam, you hold that certification for life provided you renew it every two years. If you renew it timely the fee is \$30, there’s no change in that. If you renew it late, and by late we mean up to a year late, it’s a \$20 fee on top of the \$30. Now what we’ve had in the past years is that we said if you’re even later you’d have to pay this \$30 fee and then you’d have to go back and take the exam. That sort of created a lot of confusion. Some people thought, “Well maybe I just got to pay the \$30.” Thirty dollars and the prospect of having to go take another certification exam seemed a bit much. So what we basically did was just make this clear that you’re supposed to get renewed within a year. You have a full year after your expiration date that you can, without taking a test, become re-certified, but after a year you’re decertified and that’s it.

Section 3, line 15 on page 2, this again speaks to the point that we wanted to have, we do have a memorandum of understanding with the Nevada Water Environment Association, but for the purpose of regulations the terms are “designee” and “agreement.” It just makes the dealings with the Nevada Water Environment Association or any other group a bit easier to deal with.

Sections 4 and 5 sort of work together and this is the sort of the guts of the regulation change. The way these two tables work, one has to do with plant classification and the other has to do with grade certification. The way it works is you first classify the plant. The plant is classified by the type of plant it is and then the size of the plant. What we call pond plants or stabilization ponds, these are relatively simple facilities to operate and what you find is as the flow increases and the components at a wastewater treatment increase, the level of certification increases. One point to make is we are only changing, in practice, the Grade V requirement at wastewater treatment plants only has to do with activated sludge and tertiary plants at flows greater than 10 to 20 million, flows between 10 and 20 million gallons a day or greater than 20 million gallons a day. In practice, this affects four facilities in the State of Nevada: Henderson, Las Vegas, Clark County Sanitation District and the Truckee Meadows Water Reclamation facility.

With the plant classification you go to what the individual or operator at the plant has to be. We’ve eliminated terms like “foreman” and “operator” because they’re not used. We now have just two terms, “supervisor” and “assistant supervisor.” We’ve defined both of those terms. Essentially “supervisor” means the person in responsible charge. The person who signs the discharge monitoring reports. The person who is accountable to our agency. The person that’s accountable to the local government. “Assistant supervisor” is somebody who is in charge when the supervisor or the person in responsible charge is away. So what we’ve done by sort of fixing this second table is said, “The level of certification of the person in responsible charge has to match up with the plant capacity.” And the other thing we did was say, “Anybody else that’s out there has to at least have a Grade I certification.” Again, I think that’s what the legislature envisioned. I don’t think they ever envisioned us going out to a wastewater treatment plant with our limited expertise and saying, “Okay this person working turning this valve should be a Grade II versus a Grade I versus a Grade III.” What we

essentially have is somebody in charge. They have the required level of certification and then we have everybody else that's out there that at least has a Grade I. I think that brings us more in line with what was originally intended.

The last change, Section 6, has to do with the provisional certificate. Again, this stemmed out of the '91 legislature. One of the items that the legislature said is, "You know you've got people out there right now that are running these plants and this may become a bit of a hardship in the smaller communities to get certification." I mean these people have been out there and they know what to do. This is essentially a grandfather clause. The way it works is and it still works today is if at the time of the enactment of the law if somebody was in responsible charge at a wastewater treatment plant and they stayed at that plant they did not have to get certified or they'd get what's called a provisional certification and there's still a handful of these out there. And as long as the provisional operators continue to renew their certificate, they are free to stay in that role. But the provisional certificate only works at the plant that they were at prior to 1991. It doesn't go with them. If an operator is only a provisional operator in Battle Mountain and wants to go to Winnemucca, then he or she has to get certified. What we've done is make it clear that all we are doing now is renewing it. This was a one-time only back in '91. So people can still renew them but this provisional certification program is not open to new people.

As you can see with Section 7 the items that we repealed get to what I was talking about earlier, that we're moving away from terms like "foreman" and "shift operator" and "hours at the plant." My group certainly doesn't have the wherewithal to go out and just be checking if somebody's got "X" many people out at a plant 40 hours a week. We want somebody in charge, somebody who's got a certification, somebody who's certification he or she stands to lose if she's not doing the work correctly. But that person's really in charge and that seems to work well, or as well as possible, with the requirements here in Nevada.

Commissioner Dahl asked have you considered or is there any effort on your part to require a certain standard a certain level of competency among the people that you certify?

Mr. Drozdoff answered I don't have anything proposed that would kind of go across the board you know in terms of some ongoing testing, is what you're talking about?

Commissioner Dahl stated no, I mean, see if my operator doesn't get his DMRs turned in then I'm responsible, not the operator.

Mr. Drozdoff stated actually the way it works is a person running a plant and the operator are both responsible. The way it would work the operator has something to lose with this certification. If my group and folks looking at the DMR say, "You know we've had habitual problems with this operator" it is incumbent upon my group to initiate or at least make a request of the Nevada Board of Certified Operators, of which I am one of seven members, to review and take disciplinary action. Just like the Professional Engineering Board would take action against an engineer or a medical board would take one against a doctor. We would be tasked with providing the Board members some background. Say, "Here's what happened. This operator is habitually late. We've kind of given them the three strike rule. We've worked with them and told him this is how you do something, yet it's still not done. Maybe this person is not really up to holding this level of certification or certification at all." That's really the process that we have and that process exists today and it would exist tomorrow. We also obviously take, it doesn't have to come from us. We've taken disciplinary action in the past from things that come from other operators, from the local governments that know something, people that are responsible for a plant and there's a, like I said, that is really the sort of a disciplinary way to deal with operators who are having difficulty. Short of that I don't know that I am proposing or would think of anything else that I could propose.

Commissioner Dahl asked how big of a problem is it to, I mean in the rest of the State, for the availability of operators and small plants?

Mr. Drozdoff answered I would say it's a little bit of a problem which is why the provisional certification was in place that the legislature started. One of the things that we do allow operators or potential operators to do is we allow them to have a Grade I certification you have to have a minimum of 12 months on-the-job experience. But we do allow people to take the test any time. You get what's called an operator in training. That way if a facility says, "You know I've got somebody really sharp here, but they don't have the 12 months of experience" they can hire them, they can take the test, they can pass the test and then when that 12 month window passes where they are working at a facility, their certification kicks in.

Commissioner Dahl asked what's a minimum or grade requirement for a plant like mine at 25,000 gallons?

Mr. Drozdoff answered that would be a Grade III. If you open up to the table, that first table, plant classification, your facility is a small sludge plant. Even though it's small until you get really big, up to 5 million gallons a day then you step up to a Grade IV. But it's a Grade III.

Commissioner Dahl asked are there any provisions to make an exception there if a Grade III operator isn't available? Can you have a Grade II operator?

Mr. Drozdoff answered there aren't any provisions other than allowing somebody to take the test and sort of learn on the job. In the interim you're still responsible for having a Grade III operator out there which can be done through contract services or the like. But there isn't any waiver from this, no.

Commissioner Reavis asked back in Section 2 dealing with the Water Pollution Control Association or it's approved designee in Section (inaudible) who approves the designee? What's the definition of an approved designee?

Mr. Drozdoff stated I don't know that that term is defined. But within the context of these are the Division of Environmental Protection regulations. Right now we're sort of authorized to deal with the Nevada Water Pollution Control Association. I would say it's us. It's the Division of Environmental Protection. Right now we have a designee. That designee is the Nevada Water Environment Association. That's as I see it.

Commissioner Reavis stated on the next page in Section 3 you use the term "appropriate designee" kind of for the same thing. It might be well just to use the same term so that it means the same thing.

Mr. Drozdoff stated that's a good catch. We can certainly work with the LCB and make sure we're using the same term.

Commissioner Reavis asked how much significant difference is there between a Class V exam and a Class IV exam given by the ABC? How much do we add on that really is significant?

Mr. Drozdoff answered I don't wish to say this in a disparaging way, but I don't think there was anything. Because we were making up the exams and basically you know you have a bunch of either volunteer operators or non-operators trying to put together an exam to test the highest level of operator certification a Grade IV which is done by ABC. They take a clearinghouse of questions from throughout the country and from what I'm told it's quite a good exam. The Grade V we would ask in a completely different way. They were essay-type questions about management styles. Again, it was our best effort. But unlike in California where you have a bureaucracy of probably the group of the Bureau of Water Pollution Control just set up to do exams where they can probably ask some pretty in-depth questions, it just really didn't add a whole lot of value.

Chairman Close stated on page 4, paragraph 2 on line 4 you allow an operator to be on the job and working for a year before he's even required to take an examination for a Grade I. I mean all people who work in a plant, I presume, are not operators.

Mr. Drozdoff stated that's right.

Chairman Close asked why would you allow an operator who has responsibility for the operation of the plant to work without being certified?

Mr. Drozdoff answered there has to be a way to get these men and women in the door. I mean it's a bit of a Catch 22. If you say you have to be certified and in order to be certified you have to have a year's experience working at a plant, but in order to get the experience working at a plant you have to be certified. This basically enables entities, communities to have an apprenticeship program, an operator program where they can find somebody who has got some good education, whatever skills, technical skills but doesn't have that formal 12 months out at the plant and it allows the facilities the ability to hire. By taking the test it does give them some sense that this person will make it in 12 months.

Commissioner Dahl stated you know another reason for that I think is the certification doesn't certify the level of common sense in the operator or the amount of mechanical ability and sometimes that's something that's really important and that the operator can get somebody who can figure things out that they can't. It's an important part of operating a plant we have found out.

Chairman Close called for further questions.

Commissioner Johnson stated just a comment. Confusion on my part. I think I recall you saying that in this one-year apprenticeship program the individual that is hired has to take the test early in that?

Mr. Drozdoff stated they can, they don't have to.

Commissioner Johnson stated oh, okay. They can wait until then.

Mr. Drozdoff stated right.

Chairman Close called for further questions. There were none. He called upon Starlin Jones.

Starlin Jones introduced himself as representing the Nevada Board of Certification for Wastewater Treatment Plant Operators, currently employed as a senior operator at the Truckee Meadows Water Reclamation facility. He stated I also hold a Grade V wastewater treatment operator certification. I'm for the elimination of the Grade V because I've taken both the Grade IV and the Grade V tests in Nevada. I was certified in California as a Grade III operator before I moved here 16 years ago and I valued my California Grade III more than I did the Nevada Grade V because of the type of test questions that were on the test.

The Grade V basically has a lot of management questions and anybody that has a management degree or has taken any kind of management courses could probably pass the Grade V. The Grade IV test is more applicable to what a wastewater treatment plant operator that is in responsible charge would do. It has a lot of very complicated calculations that need to be done day-to-day in a wastewater treatment process. I apologize but we do have a newer newsletter that came out in July that we did mention that this meeting was going to take place. Just off the track a little bit there. But as far as the statistics go, a Grade I operator the passing rate in 2001 was 74 percent, a Grade II 69 percent a Grade III 43 percent. You can kind of see the decline. Then you get to a Grade IV, it was only 29 percent. Then you get back to the Grade V who was up to 54 percent again. So that kind of gives you an indication. The Grade IV right now is much, in my opinion and the opinion that I've solicited throughout the State, is much more difficult than the Grade V at this point in time.

Originally the Grade V was brought about because in the history of the voluntary certification way back then, our IV people were trying to model the certification program I think based on what California does. It doesn't make sense the way it's set up now. For instance, I believe that the City of Las Vegas, to reiterate what Leo had to say, they had an opening for a facility plant manager and they were soliciting for applicants and they received applicants from all over the country. But if they were to receive an applicant from say the Indianapolis

facility or the Chicago facility, which the Chicago facility is probably like 1 billion gallons a day compared to the City of Las Vegas I believe is somewhere in the neighborhood of 80 to 100 million gallons a day capacity, the person from the Chicago facility was not qualified because they didn't have the Grade V. However, they did amend it to where if they took the Grade V and passed it, if they were selected they could have the job. In my opinion, I think the Grade IV is sufficient enough for our state and it works well and it also helps to standardize our certification program throughout the country.

Commissioner Coyner asked will you become a Grade IV now? Do you have to drop down because there's no Grade V anymore? Would that inhibit you getting a job in California if you had a really good job offer at a Grade V in San Francisco? Are you going to be inhibited from that now because you'll be a Grade IV instead of a Grade V?

Mr. Jones answered well, number 1, I'm a lifer in Nevada now. But to answer your question, and I've thought about that, I would be eligible to take a Grade V and I would study for it and I would pass it just as I did the Grade IV or V here. The Grade V in California, I can tell you right now, is much more difficult. It would be a lot of studying on my part to be able to pass it. I'm confident that I would, but I'm going to stick here in Nevada.

Commissioner Coyner asked so we didn't have reciprocity at Grade V between California and Nevada before this?

Mr. Jones answered no we don't. We have reciprocity only with a Grade I and II in California and that's it.

Mr. Drozdoff stated those individuals that worked hard and passed the Grade V exam will keep their Grade V exam. It doesn't necessarily do them a great deal of good in Nevada, but they are still Grade V operators in Nevada.

Chairman Close called for further questions. There were none. He called for further public comment. There was none. He called the public meeting closed. He called for discussion among the Commission members.

Commissioner Villaflor asked regarding the same question that you asked earlier about the one-year experience before being granted a Grade I operator license, are new employees at the treatment plants always working with a supervisor or somebody who is licensed?

Mr. Drozdoff answered perhaps to draw the analogy to something I'm familiar with like an engineer, an engineer in training. I guess the answer to the question is yes. They are always going to be working for somebody who has a certified operator license. The vast majority of the time, that will be somebody who is also out on site. In some of the real remote and rural communities we've had in the past a contract operator who, again, is certified. But he or she is not on the site all of the time. But they're still working for this licensed individual while their 12 months pass. It's analogous to an engineer in training who has certain credentials but as they gain more competency through working out at the plant because they are working for a somebody who is certified after the 12 month period they'd be in a position to either take or be granted their license.

Commissioner Villaflor asked is there a minimum educational requirement for those people to be employed in a sewage treatment plant?

Mr. Drozdoff answered a high school degree.

Commissioner Villaflor stated the reason why I ask that question is I'd hate for those people who don't know anything about sewage treatment plants while they're in training be left alone. Push the wrong button and . . .

Mr. Drozdoff stated the requirements are there for the plants. Every plant must have at least a Grade I licensed operator all the time.

Commissioner Villaflor asked so there will be at least a minimum of two people working; one who is knowledgeable about this system and another one who is in training?

Mr. Drozdoff answered that is the case about 95 percent of the time. I can think of a couple of examples, like in Esmeralda County where the county was able to hire their own person. What they did was over this year period they also hired, so the person wasn't on site all the time, but they hired this contract operations group that would coordinate with the operator, come down to the site a minimum of I think twice a week to make that work. Like I said, the vast majority of the time there's somebody out there, but we have found that in the very remote areas, using this contract operator, who is still licensed, works.

Commissioner Villaflor stated I have some concerns about somebody who is not very knowledgeable about the system being left alone to operate the system, although they could be available through communication systems.

Mr. Drozdoff stated I can't disagree with you. We've been at this for about a year and in the urban areas it's not a problem, but when you get out into the real rural areas in Nevada, there's just nobody there. So I guess in an ideal world I would agree, I would like to have somebody out there. I don't think an engineer or an operator in training is going to be told that they have to, their authority to push all the buttons and turn all the valves, because there's still this contract operator whose experience counts and whose license counts and he's signing the discharge monitoring reports filed to the State. But it has happened where we have this arrangement where there's the on-site person 40 hours a week is a local, somebody who is getting his or her certification but hasn't gotten it yet and they have to work with the contract staff. I will also point out that one of the other programs within the Bureau of Water Pollution Control that we offer is something called the Circuit Rider Program. We get a grant and we hire an operator to go out to these sites. So one of the items that I have at my disposal is if I know that there's a sort of potential weak link there, I can direct resources through the Circuit Rider Program to go visit Esmeralda County a whole lot more, Goldfield a whole lot more, because we know that they're in a less than perfect spot.

Commissioner Dahl stated we have that situation at my plant with the operator and the assistant to the operator who goes and monitors what's happening and makes changes that are approved by the operator. But he wouldn't go do anything without permission from the operator or direction from the operator to make any substantial changes.

Commissioner Villaflor stated my concern is the health because once somebody makes a mistake there instead of opening a certain valve outflow goes inflow it can affect the population right away.

Mr. Drozdoff stated I don't think that somebody would be turned loose in that environment. But, again, taking a devil's advocate position, if in fact all that happened the safeguard against it is there's still an operator in responsible charge tied to that facility and if something as egregious as that happened, the person who left this operator who didn't know anything in response, in being able to do this, he has something to lose. The facility has something to lose. Of course, we have fining powers and things like that, but the operator himself or herself has something to lose because they have this license. We put a lot of credence in somebody holding the license and it's something that they can lose. I was just trying to be completely candid with you. I think in the vast majority of the cases you have the situation that you describe. That you have somebody out there on site in this apprenticeship program is working as you would envision it working. They are learning the tricks of the trade. They're learning their craft and once they have enough experience they're able to kind of do it on their own. I just wanted to be candid that in some remote cases we've got to go this other way.

Commissioner Johnson asked a question about the language that was brought up about approved and appropriate designee. Do we need to make an amendment to that?

Chairman Close stated I think that amendment has been adopted or accepted and that was to take out “appropriate” on line 18 page 2. He then called for further questions. There were none. He called for a motion.

**Commissioner Dahl moved for the adoption of Petition 2002-09.**

**Chairman Close stated as amended.**

**Commissioner Dahl stated as amended.**

**Commissioner Reavis seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item V. Regulatory Petitions, Petition 2002-09.**

**(Petition 2002-09 (LCB R103-02)** is a permanent amendment to NAC 445B.001 to 445B.395, the air pollution control program. The amendments provides for a new Class I Operating Permit to Construct Program, an amendment to NAC 445B.327 for a late fee assessment for annual fees and minor technical corrections to the regulations. These amendments reorganize and consolidate the structure of the Class I, II and III operating permit regulations and provide clarification of the methods of calculating heat input. A new Operating Permit to Construct program has provisions relating to definitions, applicability, application requirements, content of the permit, timelines involved in the permit, and renewals. NAC 445B.22097 is amended to clarify the eight-hour Ozone standard and the addition of a 2.5 micron particulate standard. NAC 445B.221 is amended to add various subparts on Hazardous Air Pollutants of the Code of Federal Regulations, NAC 445B.327 is amended to provide for new Operating Permit to Construct Fees, amendments to Surface Disturbance Fees and replacement and change of location permit fees. The Prevention of Significant Deterioration Fees are consolidated in NAC 445B.327, and a penalty amount for late fees is included. NAC 445B.291,445B.300,445B.303, 445B.313, 445B.323, and 445B.335 are repealed.)

Mike Elges introduced himself as chief of the Bureau of Air Pollution Control. He stated I had hoped this morning to provide some information and an overview regarding these regulation changes that are being proposed. Unfortunately, we did not receive an LCB version of these regulations until late Monday afternoon and given the size of the package that we’re proposing to deal with and some of the changes that we haven’t had an opportunity to review from the LCB version, we’d like to request to withdraw the petition at this time with the understanding that we would like to bring this package back at the next hearing to revisit these regulation changes.

Chairman Close stated without objection, the petition can be withdrawn. .

Chairman Close moved to **Agenda Item V. Regulatory Petitions, Petition 2002-11.**

**(Petition 2002-11 (LCB R104-02)** is a permanent amendment to NAC 444.842 to 444.9555, regulations relating to hazardous waste management and facilities. The amendment updates the reference to the federal code of regulations (CFR) from July 1, 2001 to July 1, 2002 in NAC 444.8427, 444.8475, 444.850 444.8632, and 444.9452. NAC 444.8455 and 444.8455 is amended to require emergency preparedness and contingency plans for containers and tanks. NAC 444.86325 is amended to remove the prohibition on the implementation of 40 CFR Section 261.2(c)(3). These amendments require hazardous waste recyclers to comply with standards similar to hazardous waste treatment and storage facilities.)

Jim Trent introduced himself as being from the Bureau of Waste. He stated with this petition the bureau is proposing to update our adoption by reference of federal hazardous waste regulations and to make three state-initiated changes to the NAC. Two workshops to solicit public comment on the proposed regulations were held on August 13 and 14, 2002 in Carson City and Las Vegas. A total of 12 people attended the workshops. The proposed regulations and minutes from the workshops, including questions and answers were posted on the NDEP website and available for review and comment via the Internet.

As you are aware, Nevada adopts by reference federal hazardous waste regulations. Since changes are continually made at the federal level it is necessary to periodically, annually, 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. Sections 1, 2, 6, 7 and 9 of this petition incorporate federal rules published from July 1, 2001 to July 1, 2002.

Let me very briefly review the six proposed federal amendments. They include clarifications to the mixture rule specifically stating that mixtures of Bevel exempt (mining) wastes and wastes listed as hazardous solely because they contain a characteristic of ignitibility, corrosivity and/or reactivity are exempt from RCRA regulation once the characteristic is removed; the listing as hazardous of three wastes from the inorganic chemical manufacturing industry which are not present in Nevada; revisions to the Corrective Action Management Rule to facilitate treatment, storage and disposal of hazardous waste managed during cleanups and to remove cleanup disincentives; corrections to and interim reinstatement of hazardous air pollution standards that were vacated by a federal court but are now reinstated until new final standards are finally promulgated. And, finally, revisions to the definition of solid waste regarding mineral processing wastes and disallowing use of a procedure known as the Toxicity Characteristic Leaching Procedure for certain wastes in response to another past federal court decision.

Now for the State-initiated change, in response to compliance problems at some recycling facilities and a fire and explosion at an aerosol can recycling facility last fall, the Division is proposing revisions to the standards governing hazardous waste recycling facilities found in NAC 444.8455 and 84555. That would be Sections 3 and 4 of the petition. Existing regulations require that recycling facilities obtain a written determination of recycling from the Division. This process, which is more stringent than federal requirements, was intended to provide the Division with a means of identifying facilities that recycle hazardous waste and verifying that the process was legitimate recycling and not treatment or disposal that would require a permit. The proposed revisions are intended to broaden the scope of the existing written determination process to require submittal of an operating plan that includes provisions for emergency preparedness, demonstrates compliance with tank and container standards, provides a closure plan and financial assurance for closure. These changes impose some of the safeguards typically afforded by a permit, while still exempting the recycling process from the full permit requirements. With the exception of the closure plan and financial assurance requirements, most existing facilities are already complying with these additional standards and need only document their compliance as part of their operating plan. The Division's goal is to encourage legitimate recycling operations in Nevada while providing reasonable regulatory safeguards. You should note that the shaded areas in Sections 3 and 4 are references to the NACs which were added after the initial petition drafting to clarify that antifreeze recycling is regulated by the state in the NACs. This revised wording has been reviewed and approved just this week by the LCB.

The proposed modification to NAC 444.8456, Section 5 of your petition, is a change recommended by the State Office of Historic Preservation. The existing regulation is considered too broad and exclusive. The proposed revision will specify that hazardous waste management facilities may not be constructed within a "significant" historical or archeological area without proper mitigation. Again, please note that the shaded wording that you have before you is a second, revised version that was resubmitted to LCB after the original drafting and has also been recently reviewed and returned by them.

Commissioner Johnson stated a question on this. An overly broad definition but we have significant historical archaeological sites, who determines significant, but the eligibility criteria is a national eligibility criteria? So are we not redundant in saying a significant that has national criteria. Isn't the national criteria significant? What difference?

Mr. Trent stated I would have to say that I think originally we had drafted it using only the word "significant." The recommended wording from Historic Preservation was to qualify that so that we wouldn't have the same difficulty. If you look at the original wording it just says historical or archaeological area. I think what we're trying to do is qualify it so that when we say significant we have some sort of

definition to that, which is qualifies for placement on the historic register. In some sense it may be redundant.

Chairman Close asked what if you take out the word “significant?”

Mr. Trent answered I think we could probably live with that given that they do qualify it. The wording was developed in discussion with the Office of Historic Preservation. But, again, that’s our recommended and proposed wording. As it developed originally prior to receiving the recommended wording we had initiated the change and used the term “significant” and as it developed they provided us with a qualifier that stated that.

Commissioner Johnson stated I guess and I don’t have, well I do have a problem with the overly broad significant if it were to just stand alone, but in my mind I might think that there might, there’s possibly some things that we consider important that don’t meet the national criteria and would we have any ability to address those sites? This is purely ignorance on my part because I don’t know what the national standards are and how broad they are or specific, but we are tying our view to national standards.

Mr. Trent stated with the wording, that’s correct. Without going too far out field, typically or as required by the regulations, someone who wants to cite a facility is required to do a historical study. We pass that along to our colleagues at SHPO and they return that to us and the evolution of this was that in the discussions the wording that we had didn’t really provide for any sort of way to make that distinction of what historical means. You’re asking me is there any leeway other than what’s on the State historical register that would preclude citing?

Commissioner Johnson stated no I think the language says eligible for, it doesn’t have to be on the listing. It’s just that it would meet the criteria of the national for a national listing.

Chairman Close stated I think the term “significant” just invites legal challenge. My significant is different than your significant and that means a court is going to decide it if a problem comes up. I would suggest deleting the word “significant” and letting it stand with “eligible for the State historical register or the national historical register.” It may avoid some litigation.

Mr. Trent stated if that’s your desire that’s fine.

Commissioner Coyner stated regarding approved mitigation activity, approved by Office of Historic Preservation or approved by the Division?

Mr. Trent stated ultimately the decision of whether or not to cite the facility rests with the Division of Environmental Protection. The regulations do require that they do the study which we then do relay to them and ask for their opinion.

Commissioner Coyner asked so when they ask for some specific reference to the Office of Historic Preservation I guess it would be as other situations, we imply approval by the Division?

Mr. Trent answered that would be my understanding. But if the study was not acceptable to SHPO, State Historic Preservation, I doubt that we would overrule them given that they are the experts in that field.

Commissioner Coyner stated right.

Mr. Trent stated I did have one other note to make before we close. Finally, you’ll see there is a proposed change Section 8 at NAC 444.8632.2 and that will delete a state-initiated revision that was approved last year that will become obsolete with the adoption by reference of the Federal Register through July 1, 2002. That issue concerned secondary materials reclaimed by the mineral processing industry and was an instance where

a federal court had stricken a change made by the EPA. They had been tardy in making any sort of amendment by that. So as several other states did, we initiated a State change, but now the feds. have finally reacted to that federal court case, removed that language, and our State change will be obsolete and no longer needed with the adoption by reference to July 1<sup>st</sup> of 2002.

Commissioner Johnson stated a question on page 7 where we list the publication price of federal publications, is there a reason that we include the price in our regulations so that every time that they change their price . . .

Mr. Trent answered I think the statute requires it.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He called for discussion by the Commission. There was none. He called for a motion.

**Commissioner Coyner moved to adopt Petition 2002-11 as amended.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item V. Regulatory Petitions, Petition 2002-12.**

**(Petition 2002-12 (LCB R105-02)** is a permanent amendment to NAC 444.570 to 444.7499, the solid waste disposal regulations. The amendments add a requirement to conduct periodic topographic surveys and to calculate remaining capacity of landfills. The amendments reduce minimum buffer zone requirements for composting facilities and define the type of composting facilities needing to engage the permitting process. The regulations amends the permitting process to allow the inclusion of conditions on permits following the public review and comment period. The regulation provides for more flexibility by allowing remote communities to store waste for more than one week when there is no nuisance or threat to the environment or public health. The minimum design standard for public waste bin facilities for remote communities is increased to allow greater storage. The regulation provides that open burning be allowed for yard waste and clean wood waste in remote communities where no practical alternative exists to dispose of the waste stream. The air pollution control authority has to approve the open burning. Amended is NAC 444.607, 444.628, 444.640, 444.6405, 444.6425, 444.662, 444.66647, 444.667, 444.702, and 444.728.)

Les Gould introduced himself as supervisor of the Solid Waste Branch of the Division of Environmental Protection. He stated the petition before you here seeks amendments in several areas of the Nevada solid waste regulations. Some of these are just minor cleanup things, a few wording changes. There are others that are important, although limited in scope and these include volumetric surveys for landfills, compost plant regulations in the area of processing of an issuing disposal site permits and then finally solid waste management methods in remote, rural communities. In developing these proposed changes, the Division held public workshops in Carson City, Las Vegas and Elko and this petition was drafted after consideration of the comments and questions heard during the workshop.

I'll go through the petition section by section and briefly describe the proposed changes and if you have any questions please interrupt me as we go along. I also have four minor wording changes that I would like to have inserted in the proposed petition that have come about after further review after the petition was received back from LCB. I will address those as we get to them in each section.

Sections 1 and 2 simply add the word "waste" to better clarify the meaning of the term "public waste storage bin facility." It's something that's always been left out.

Section 3 modifies an existing section to allow the solid waste management authority to approve open burning of yard waste and other untreated wood waste at solid waste facilities in remote communities that have no other practicable alternative. Such open burning would still require approval by the Air Pollution Control Authority.

The result of this amendment would be to allow open burning on an infrequent basis in remote communities that otherwise have a significant burden to transport such wastes long distances to the nearest disposal sites. Examples of communities that might be eligible for this exemption would include places like the town of Midas in Elko County, which is about 70 miles from the disposal site that serves it. The summer population in Midas is about 80, in winter it drops down to about 18. Montello also happens to be in Elko County. That's another example. It's about 100 miles from the landfill with a summertime population of about 149. So these are small communities in remote areas that would stand to benefit if they could qualify for this.

We did receive a comment suggesting that the term "remote community" should be better defined. We considered that and have chosen not to try to define it. I take it the terms of definition would be in terms of the distance, the remoteness and perhaps in terms of the size of the community. We feel that there are other issues that could affect that kind of a decision or that could affect the appropriateness of being eligible for this so we do not feel that it is appropriate to provide some specific numbers for that remoteness issue.

Section 4 of the petition modifies an existing regulation by eliminating language that effected the transition of closing uncontrolled dumps throughout the State. This language is proposed for deletion and it really no longer has any force.

Section 5 adds language that provides flexibility to the solid waste management authority in the process of issuing disposal site permits. First, following the close of the public review period the solid waste management authority currently has only 15 days during which to either issue or deny the permit. We have found that that is quite a short deadline sometimes to respond to especially when there are significant issues that are raised during the public review period and what we are proposing here is to extend that period from 15 to 30 days to allow us more time to issue or deny the permit.

The second change that is proposed is to explicitly provide that the solid waste authority can modify or place conditions on the permit based on the comments received. We find that we often do feel that changes to the permit are appropriate based on the results of a public hearing or public comments received and the regulations currently do not expressly give us the authority to do that. But we feel that it's necessary in order to carry out our business.

Section 6 provides discretion to the solid waste management authority to allow the storage of garbage for more than the standard one week in remote communities. This amendment is intended to provide relief to places like Jarbidge or the town of Midas that have significant hauling costs due to the remoteness from disposal sites and also because they may not generate enough waste in a seven day period to fill a standard roll-off container. Any questions so far?

Chairman Close stated the only question I have is the term "remote." I read the letter that has been submitted to us as one of our exhibits. How do you define remote? I mean is there anything in your rules and regulations or your (inaudible) that defines the term "remote?"

Mr. Gould stated that would be up to the discretion of the solid waste management authority. We don't have a definition for it. We could develop some guidelines for that sort of thing. What I'm thinking of I guess is probably something more than 50 miles away and maybe a population less than 200. But I'm reluctant to put those numbers in there because there may be communities that generate more or less waste and are not able to fill up a normal size container because of other factors that effect that community, perhaps the vegetation waste that they generate or something like that.

Chairman Close asked could you develop some guidelines so the people have a clue as to what standard they have to meet or how far they have to be away from an area? Because right now, nobody would have an idea of what a remote community is.

Mr. Gould answered one of the things that I've done, I didn't bring this with me, but I had prepared an application form. They would basically have to apply to us for this . . .

Chairman Close asked for exemption?

Mr. Gould answered for this exemption. The application form asks them to say why they need it and how far away they are. It does not expressly have guidelines in it but we could do that. We have done that in some other cases for some other types of solid waste management issues.

Chairman Close stated if you wanted to enforce this I think it's so vague that it's almost unenforceable. So without having some guidelines to kind of protect yourself, you may have some problems with that language.

Mr. Gould stated the way we have drafted it is that we have the authority to issue that. Now I suppose they could challenge it, but . . .

Chairman Close stated you could get challenged if you turn it down and then they say, "Well we're remote." And you say, "Well you're not remote." You ought to have some kind of a standard so that people can determine if they are or are not remote.

Mr. Gould stated we could do that in guidance documents. Does that seem appropriate?

Commissioner Coyner stated I would suggest that you don't even need the word "remote" because they're going to weigh all the various factors: winds, quantity, distances, time of the year, temperatures. All of those things will figure into their decision as to whether to grant the exemption and so I would suggest why do you even need the word "remote?"

Mr. Gould stated we could probably do without that and then issue a guidance document that would say that these are the factors that would influence the solid waste authority to authorize this sort of exemption and distance from the solid waste facility as well as the size of the population served would probably be among those things.

Chairman Close stated if you do take out the word "remote" you just can't just take it out. I mean there's some work that has to be done on the language. Maybe you want to think about that. We're kind of ambushing you on that point I guess.

Commissioner Coyner asked does "remote" occur in the regulation more than just the one time on here?

Chairman Close answered it does. Page 1, line 24 for example.

Mr. Gould stated I could suggest some alternative language at this point. Instead of the word "remote" what about "in a community which due to remoteness from solid waste facilities . . ." Or the population size?

Chairman Close stated maybe you would just put a definition in here as to what remote means. That may be an easier way than taking "remote" out or trying to define it every time you use the term "remote." You could just put another section in defining "remote." Remote is, whatever you come up with. It's not a good thing to try to draft language when you're standing up there. I've done that and it's not good. Continue on with your presentation and then you can give that some thought.

Mr. Gould stated Section 7 amends the existing regulation that sets standards for public waste storage bin facilities. There are several minor modifications. It would increase the maximum container volume from 100 to 160 cubic yards. This was a result of a request from a rural operator who said that they really would like to use four 40 yard containers at the site. We found that at a couple of different locations and we felt that it would be a reasonable thing to raise it to that level. Also, it would allow the use of storage bins that are not equipped

with a cover necessarily during use as long as the loads are covered during transport. That's been a bit of an operational difficulty for some of the operators who are handling it. Even if the bin is equipped with a cover, inevitably that cover is removed or thrown off after the first people come up and use it. We felt the important thing was to keep it covered during transport.

This section also would reiterate that the solid waste management authority may approve the storage of solid waste at such facilities for longer than one week if it's demonstrated that this will not create any health hazard, public nuisance, or impairment of the environment. It would require that the facility be constructed to provide convenient and safe access. This was eluded to in one of the comments that we received. This language does not provide a specific standard, which we didn't necessarily want to do. We want to leave flexibility to the local operators and municipalities in rural areas to design these things to meet performance standards and not necessarily specifications that we come up with. But we have found that in some areas that what can happen is somebody just puts a roll-off container out on the side of a hill and then calls it good. We feel that is not sufficient. You need to have some kind of litter fencing around it to contain it to control the litter. It doesn't necessarily have to be 6 foot or 8 foot Cyclone fencing, whatever works. It also needs to be safe. Some sites have set up containers in such a way that you walk up a piece of rickety old plywood to get to the thing and dump your waste in there and we feel that that's not really accessible to whoever might need to use the site. So, that is one of the other additions into this.

Section 8 amends existing regulations concerning compost plants. This was partly (inaudible) as a result of the hearing that we had recently concerning Full Circle Compost, which buffer zones came up as an issue and we were directed to address this issue. We have done some other things in addition at the same time. We clarified in this amendment that the compost plant must be permitted as a solid waste disposal site and that means it must follow the permit issuance process that we follow for landfills. It defines also what must be included in a compost plant permit application. We felt this was necessary for consistency. We're not establishing a lot of standards for compost plants to operate and be designed under right now, but we do feel that they should all be providing us with a minimum of information with each application. The amendment also limits the requirements for buffer zones to only those facilities that accept municipal solid waste, that is household solid waste and are not contained within a building. This standard is similar to the one for municipal waste landfills and we felt that it was appropriate for a compost plant that also handles municipal waste. At the same time a minimum buffer zone is not necessary for most composters that do not handle garbage or household waste.

New language replaces the standard concerning pathogenic organisms in compost for sale. The current standard, no pathogenic organisms, is impossible to measure and we felt that it needed to be changed. Unfortunately, when we got the change back from LCB it wasn't quite right. This is one point where I have requested that new language be added and that in Section 8(2)(c)(1) which is on page 7 line 8 that that subparagraph 1 be written "must meet the requirements relating to the maximum allowable density of fecal coliform or salmonella bacteria for Class A sewage sludge as set forth in 40 CFR Section 503.32(a)."

Commissioner Dahl asked that's just for sale?

Mr. Gould answered for sale, right. And what it had said before was that there must be no pathogens in it and it's really an impractical standard.

Commissioner Coyner stated I was just going to ask Commissioner Villaflor if that's correct. It would seem like you're only culling out two things here now where as before it sounds like a bunch of things. But if a bunch of things is impractical to describe or define, then . . .

Commissioner Villaflor stated I was looking at this earlier too and one of the things that came into mind is that technically the compost should not really contain any coliform bacteria. But, you know, we cannot help the coliform bacteria that are from animals that have excreted in the compost area or the material that they are composting. Actually I'm trying to remember my industrial chemistry. Is there any way that they really test for this compost material for these pathogens? I've not heard of any.

Mr. Gould stated that's something that we would decide in the permitting process and it would be based largely on what were the feed stocks that were being used in development of the compost. If a compost plant uses sewage sludge, which is commonly done although not in Nevada, there's a couple that do, there is a federal requirement which is also enforced by the Division's Bureau of Water Pollution Control, that they comply with certain pathogen reduction standards. Now that is the standard that I've referred to here in this language. It goes into more detail in the federal requirements about how they meet those standards, but this basically is the standard that they use. They use salmonella and they use fecal coliform as indicator pathogens to determine whether or not the material is clean.

Commissioner Villaflor asked so, in essence, what do the changes of the wording mean?

Mr. Gould answered in essence it means that there's a test available that is commonly done that the laboratories know how to do. They know what they're looking for and we know what we're looking for too.

Commissioner Reavis asked the requirements for Class A sludge, don't they include heavy metals also?

Mr. Gould answered that's correct. They do include heavy metals and we haven't put that in here. We did this just because there was this section which addresses pathogens reduction in our existing composting regulations and we wanted to address that in a way that we felt made more sense. As far as heavy metals goes, that is something that would be written into the permit, probably based on the source of the material that's being used in the compost process.

Section 9 establishes a requirement for Class I landfills to conduct a topographic survey of the landfill every five years to verify the remaining volume and calculate the remaining site life. Operators of most of Nevada's larger landfills, including the City of Elko, conduct such surveys on an annual basis. This information can be used to ensure that air space is being used efficiently, to modify financial assurance programs, to adjust fees and plan for future disposal capacity. There's a temptation among smaller landfills to dispense with this critical measurement. The Division believes, however, that some of these landfills have used up available capacity much more quickly than anticipated. Failure to recognize actual disposal volume used and capacity remaining could result in a disposal capacity crises or an under-funded financial assurance mechanism. We received a comment from Humboldt County suggesting this would be an unnecessary expense for that county to go through this process because they had recently estimated their capacity using a weight-based method. We had asked them to provide some information to us on their available disposal capacity because they were required to update their solid waste management plan. They had proposed to do this and we accepted their estimate, but we did say in our response to them that we still felt that it would be necessary for them to do an actual survey, a physical survey and that if these regulations are adopted that they would be subject to that in January of 2004. We don't feel that this is an unreasonable burden for Humboldt County because they will have over a year to comply with the requirement. They can amortize this cost over a five-year period and they will obtain a more accurate picture both of the actual footprint of the landfill and of the remaining disposal capacity.

This refers to another proposed change to the language in the petition, there are a few landfills, those of the trench-fill design that can do accurate capacity evaluations without a topographic survey. Basically what's happening is you're digging a hole of a certain shape, a trench, and you're filling that hole up. So you know what your volume is once that is filled to grade and as opposed to an area fill where you're making a mountain, you're filling up a canyon in various wastes where really you can't calculate that out without doing actual measurements.

So, what I would like to do is to propose a phrase be added in Section 9 to allow for an alternate method of volumetric survey for Class I sites at page 8 line 10 after the word "survey" add a comma and then the phrase "or other volumetric survey approved by the solid waste management authority."

Section 10 basically does the same thing for Class II sites, that is for the smaller landfills, that Section 9 does for a Class I site. It establishes a requirement for a periodic topographic or other volumetric survey. I would also insert new language in Section 10 at page 9 line 8 after the word “survey” add a comma and then “or other volumetric survey approved by the solid waste management authority.” And that would give us the flexibility to allow a different method for actual measurement.

I would also like to add one last section. This is the last item in the handout that you have and that is to add a Section 11 to impose the requirements for safe and convenient design and as well as the litter fences for public waste storage bin facilities for existing sites as well for new sites. The language that I propose for that is “The owner or operator of the public waste storage bin facility that is operating on the effective date of this regulation shall comply with the provisions of Subsection 4 of Section 7 of this regulation not later than one year after the effective date of this regulation.” We feel that for the level of the additional requirements that we’re asking for that 12 months is plenty of time for them to put up a fence and perhaps make modifications to meet those requirements.

As far as the remoteness issue, I have just received a proposed definition that might work. That is: a remote community as used in those sections is one that is 50 miles or more from the nearest disposal site and has a population of less than 200 year-round residents.

Commissioner Villaflor asked how about proximity to a major freeway highway?

Mr. Gould stated that’s a good point. It seems like if they’re on a major transportation route that they really shouldn’t be eligible for the exception.

Commissioner Dahl stated when you put a hard and fast number to it like 40 miles or 50 miles and you may be 30 miles on a rough road down through a canyon or you may be 60 miles on a paved road, it makes a lot of difference.

Commissioner Coyner stated or a river. There aren’t many rivers in Nevada, but I can think of an example where if there was no bridge across the river and you had to go way around to get to that other facility or over a big mountain as Demar is indicating, there’s a lot of difference in miles in Nevada in some places.

Dave Emme stated like Les said we really wanted to stay away from putting a hard and fast rule or regulation or number on this term “remote” and our intention was to leave it up to the community to make their case. I actually don’t think that this is something that’s going to come up in very many communities. I think we pretty well know where these things are going to come up where a community has a drop box out in the middle of nowhere and they may want to burn some yard waste rather than have to haul it a long distance or where they simply can’t fill up a drop box within a week and they want to store it longer. There are a handful of communities where this really occurs and we didn’t necessarily want to tie our hands with the 50 miles or a distance or population, but let the community make their case and leave it to our discretion to judge whether they made their case or not.

Commissioner Dahl stated like, for instance I think Beowawe is about 46 miles from Elko. It might take them 60 days to fill a box. Their population doesn’t fluctuate any. If you set a 50 mile limit . . .

Commissioner Reavis asked isn’t it possible to set those limits though based upon best judgment and then allow for exemptions based upon circumstances that are different?

Mr. Emme answered there is a variance provision in the regulation. We could write something in to allow for a more specific exception in this case, but there is always the opportunity for someone to come in and seek a variance.

Chairman Close stated maybe that's the best you can do is just let it go, but it seems to me that if somebody challenges you on it, the term "remote" is so vague and ambiguous, that's the usual legal terminology, you're going to lose.

Mr. Emme stated well, we're willing to go with putting some numbers on it if that's the pleasure of the Commission.

Chairman Close stated I agree that more than 50 miles, you know it may not be an appropriate cutoff, who knows? And 200 people may not be an appropriate call, maybe 199.

Mr. Emme stated but if we set a limit I guess we still have the variance route as an opportunity. Or if it turns out that that simply is the wrong number we come back and amend the regulation.

Commissioner Johnson stated basically, if you're challenged on this though and you were to lose, probably from the intent of what we're trying to do here, there's probably, well I wouldn't say that, but it would seem to me that the basis of the challenge is going to be on a substantial economic basis if we don't, Beowawe, if we don't fill up our bin except every two weeks, or three weeks or whatever and we're 46 miles away so it's costly to abide by the weekly pickup. What we want is essentially a variance already, is what this regulation is attempting to do in setting some parameter to that. So I think I would be comfortable leaving the "remote" in and if it gets to be a problem then we make the change, rather than asking you to process a variance from this very small community that would become indeed again burdensome. I have concern about definitions, but I think in this one maybe to fail in the side of leaving it ill defined might be appropriate.

Mr. Emme stated well that's the way we felt drafting the regulation, but . . .

Chairman Close stated maybe that's the best you can do then under the circumstances. You've thought about it obviously and you're aware of the problems with the term "remote." And I think we're talking about some undue hardship to a community and that I guess can go along with the definition of remote.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He called the public meeting to a close. He called for discussion by the Commission.

Commissioner Johnson stated I think we need to make a couple of changes, but we also need to include the exhibits as part of the record.

Chairman Close stated correct. Is there a motion?

**Commissioner Johnson motioned for adoption of Petition 2002-12 with the additional amendments on Exhibit 7 and including Exhibits logged 3 and 5 as part of the record.**

**Commissioner Villafior seconded the motion.**

**The motion carried unanimously.**

Chairman Close adjourned the meeting for lunch at 12:30 p.m. and reconvened the meeting at 1:30 p.m.

Chairman Close moved to **Agenda Item VIII. Settlement Agreements on Air Quality Violations**  
**A. Modern Concrete.**

Mike Yamada introduced himself as the compliance supervisor. He stated I sent out quite a large package for everybody to look at. And just so I won't be repeating the same thing over and over again, I would like to say that all of these settlements have been agreed to by the companies and we think that it's a fair settlement. So rather than say that each time that they agreed to it I'm just going to let it pass for that.

Modern Concrete operates a concrete materials plant in Elko, Nevada. They got a permit from us to operate a concrete silo, but they didn't put a bag house, which was required. Upon inspection we found that they had been running for a short time so we shut them down and told them that they had to have this silo. We had an enforcement conference. After the enforcement conference we issued NOAV 1655 for a sum of \$200. The reason the sum is \$200 rather than something larger is they really didn't do much work. They set the thing up and they shut it down. So we came to agreement that the fine should be about \$200. They had one previous NOAV. They brought the silo in without a permit initially and they were fined \$510 for that. That has been resolved at the last (inaudible).

Chairman Close called for questions and public comment. There was none. He called the public meeting to a close. He called for a motion?

**Commissioner Reavis motioned to accept it.**  
**Commissioner Johnson seconded the motion.**  
**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. B. Lander County, Battle Mountain Airport.**

Mr. Yamada stated the Lander County Battle Mountain Airport has a permit from us for two large tanks of 50,000 each. They have six other tanks which are below the 40,000 gallon threshold for permitting. We discovered that from 1996 through 2001 they had violated the amount of throughput through those fuel tanks by a sizeable number, about four or five times per year. They also violated the VOC emission units. So we ended up with a kind of a lengthy NOAV list which totaled \$9,750. We think this is the proper fine for these types of violations and we move that this thing be accepted as it is.

Commissioner Dahl asked can you tell me who pays the \$9,550? is it the . . . ?

Mr. Yamada answered Lander County.

Commissioner Dahl asked and you had noted that they agreed to that?

Mr. Yamada answered yes.

Commissioner Villaflor asked have they made any corrections already that are for this violation not to happen again?

Mr. Yamada answered yes. They have come in and modified their permit so they will no longer be in violation.

Commissioner Coyner asked the permitted emission limits on tank 1 and tank 2, no these may have been modified now by new permits, but they were listed in here as 5.39 tons per year and .87 tons per year and they're identical tanks in size I think, aren't they? Why were the permitted limits so different?

Mr. Yamada answered right.

Commissioner Coyner stated they are 50,000 gallons each.

Mr. Yamada answered right.

Commissioner Coyner stated but yet one has a much higher permitted emission limit. Is that because they use one like a primary and it operates a lot and the other one is kind of a reserve? And the second part to that question would be in the process in getting these guys all up to date did those emission limits become identical now?

Mr. Yamada answered they worked through permitting on that, but I think the permitting people came up with tougher numbers for them this time.

Mr. Elges stated the emission limits are a little bit different on the tanks because that there isn't the same types of material stored in the two tanks. I believe there was some question also regarding the amount of turnover in those tanks and that's directly related to how much emissions those tanks have. So it's not uncommon to have the same size tank with different materials and different amounts of throughput having different emission limitations.

Commissioner Crawford asked who owns the tanks?

Mr. Yamada answered they're owned by the county. They own the airport. They own all of the facilities there. They hire a third party to run the airport just for the county.

Commissioner Crawford asked so the third party runs it for federal firefighting?

Mr. Yamada answered no. They have a contract with BLM to provide fuel to BLM for the firefighting purposes. It's not for their own firefighting. It's for the BLM firefighting and so they have a contract with the county to supply the fuel.

Commissioner Dahl asked did they know they were in violation, the county?

Mr. Yamada answered not initially, but they came forward after that and actually told us they were out of violation for four more years as well. We took all of that into account. We reduced the penalties by 15 percent because of their cooperation. They were very helpful in providing us the information needed to complete our analysis.

Commissioner Reavis asked was there any physical change in the operation of either of these tanks or was it just simply amend the permit and they're in compliance?

Mr. Yamada answered they had to amend the permit for the total throughput. It was something that had to be done.

Mr. Elges stated the question of whether the permit could be modified is not a direct, you just go in get your permit modified to the new higher level. If through that evaluation it's determined that the source cannot emit at the higher levels, then either we would have to deny the issuance of that permit or some additional pollution control equipment may be required. So it's not automatic that the source just is able to come in and just change the permit and the issue is resolved. As we normally go through a review process, it evaluates the amount of emissions change that the facility is proposing and not always is there a direct relation between what they were emitting previously and do we give them just an automatic permit to go ahead and ratchet up to what they were operating at before. So, I believe in this case we were able to amend the permit to allow the company to operate at the amount of throughput with the materials that they were using without requiring additional controls, but not always does that happen.

Commissioner Reavis asked so, in this case there wasn't any real change. It was, "Well yeah this really would be alright if we . . .".

Mr. Elges answered that's correct. There was no requirement to do additional pollution control or change material type or anything to bring the emission levels down. They were allowed to go ahead and we were able to give them a permit that allowed them to operate at the higher levels that they've been historically operating at.

Mr. Yamada stated on this issue as well, they're required by their permits to report excess emissions and other things. We didn't go beyond the basic penalties because we thought they'd be repetitive, being fined for the same thing. That's the basis of these NOAVs. But as far as the total amounts, they were out of compliance for roughly five years. They didn't really look at their permit to see how much fuel they could actually have. I don't think they really understood their permits, whoever took them out originally. They have a new executive officer on board and when she went through this thing she noticed that they had been out of compliance for quite a while.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He called for a motion.

**Commissioner Coyner motioned to accept NOAV 1627 through 1638.**

**Commissioner Dahl stated before you do, could I, I'd just like to make a comment for the record. I just question the value of fining a county like Lander County which now is, I mean it's just \$10,000, but still for a violation that they didn't even realize they were committing. Once they found out that they were not in compliance they took care of that. They came to you. They told you that they hadn't been in compliance and just for the record I wanted to state that I question the value of fining them in that situation.**

Chairman Close called for further comment.

**Commissioner Reavis stated I guess I'd have to say that if changing the permit put them into compliance, I'm just wondering why the permit wasn't changed a lot earlier so that they wouldn't have been out of compliance for the length of time that they were. It'd be a lot clearer cut if they were out of compliance and stayed out of compliance under the existing permit and they had to do something about it.**

**Mr. Yamada stated we actually found that when we did the record check found out they were out of compliance. But they did come forward afterwards and say, "Yeah, we've been out of compliance longer than that." If we had known that they were out of compliance in '96, we would have, well I wasn't here, but I'm sure somebody would have said, "Come in and change your permits."**

**Mr. Biaggi stated Mr. Reavis I understand your point. But I think it's important to also understand that the facility itself is who makes the application. They are the ones who specify the permit limitations, the throughput and estimate the emissions. Also, the obligation for compliance with the permit rests solely on the facility itself. So I agree with you that it was an easy matter for them to come forward and to make a permit modification, but that's a duty and a responsibility that's placed on the permittee. They could have easily come forward and done that, but in the absence of that they were in violation of the permit, of the permit limitations that they themselves came up with and agreed through the permit process to comply with.**

**Commissioner Reavis stated I understand that Allen.**

Chairman Close called for further comment.

**Commissioner Crawford stated I appreciate that Allen and I've been called the "hanging Commissioner" on this group a number of times, but I've got a concern with this one because we have what is largely a federal fire fighting operation using this facility, run by a contractor and the county while their name is on the permit is going to end up taking the responsibilities for it. And certainly they should have done a better job. But if this was the contractor, I'd sure feel different about it. But, boy, that concerns me because of who it is.**

**Mr. Yamada stated on the matter of the county, the new county manager replaced the former county manager who left some of the books in disarray. So it took them a while to come up with things. But it really is the responsibility of the county because the contractor doesn't know what the terms are for their permit. I mean, maybe they should have known, but they weren't the ones that took the permit out. They weren't responsible for the permit. And for that reason we went to the county.**

**Commissioner Dahl stated but the person who decided what limit they wanted to apply for was different from the person who discovered that they were above that limit. So I mean there have been some change in personnel over the years. I would just feel better about taking my position if the county were here to object. Since they aren't, I guess they're willing to pay it.**

**Mr. Yamada stated I talked to the county executive officer yesterday and she said that they were happy to pay the penalties. She said if she needed clarification she would have come down, but I said I didn't think that would be necessary. But they weren't fighting this at all. They thought it was a fair settlement.**

**Mr. Biaggi stated I understand your concern Mr. Dahl and just to remind you that penalties paid by whether it's the county or any other air quality violation goes back into the education fund for the county for the county it came from. So, really in this situation we're taking out of one county coffer and putting it into another.**

**Chairman Close called for further questions. There were none. He called for the vote on the motion.**

**Chairman Close voted yes.**

**Commissioner Coyner voted yes.**

**Commissioner Villaflor voted yes.**

**Commissioner Johnson voted yes.**

**Commissioner Reavis voted yes.**

**Commissioner Crawford voted yes.**

**Commissioner Dahl voted no.**

**The motion carried.**

**Chairman Close moved to Agenda Item VIII. C. Eagle Picher Minerals, Inc.**

**Mr. Yamada stated Eagle Picher Minerals is a company that mines and refines diatomaceous earth for production of filtration media, filter systems, paint additives and wallboard formulations in Nevada. The violations occurred at the Clark Plant and the diatomaceous earth mine. What happened was we received some complaints and we went out to the site and found that there was quite a bit of fugitive dust being generated at the mine and at the plant. And we noticed that the water trucks, they have three of them, were supposed to be used to control fugitive dust, were sitting parked and idle. So when we talked to the environmental person, a mining engineer at the plant, we found out that they weren't running these trucks because they said the water nozzles froze up and so they weren't using the water trucks to control the dust. We had an enforcement conference. They brought in some information. We thought they were not running for about three months, but after looking at their records we determined that it wasn't quite that long. We asked them to come up with a new fugitive dust plan, which they had with their permit because their old plan obviously wasn't working. They have come up with a very good fugitive dust plan we think will work quite well. For their violations for not running the water trucks as required in their fugitive dust plan that they had previously we assessed them a fine of \$3,680 and they agreed to pay that amount. We are recommending that you accept that.**

**Commissioner Crawford asked didn't we have them here about maybe your first meeting back here Mike?**

**Mr. Yamada answered we had them in Las Vegas.**

Commissioner Crawford stated they had just decided to be a lot more cooperative with you and report everything and they were hiring an environmental compliance officer and we gave them a little bit of a lecture about that's a good thing and we don't expect to see you back here. Is this the same?

Mr. Yamada stated it's the same company. It involved the other plant as well. In this case in their new plan that they've come up with controlling fugitive dust because the fugitive dust wasn't really a big issue the last time they were here, it was more with their testing. They've come up with a training program for all of the employees. They've come up with a requirement that if one of the employees sees that dust is being formed he can call for water or shut the operation down. They have to contact us to let us know when they have an episode of excess emission, if they have any kind of a problem. I think we've come a long way with them on this fugitive dust issue because they've pretty much entered into a voluntary-type of plan with us, but they've given us a much tighter plan to work from for fugitive dust control. I think they did a good job on this one. But they now realize that even though it's winter they still need to control fugitive dust and if they have a frozen nozzle problem they have to find a way to fix that.

Commissioner Coyner asked in the prior violations listings here we show in '01 that there was a larger settlement, or it was part of a larger settlement for \$182,000? Is that accurate?

Mr. Yamada answered yes. It was split up into two different items: one was a cash settlement which they paid to the school district and the other consisted of two SEP programs. One was for improving the Truckee River by removing the white top and the other one was funding . . .

Commissioner Coyner stated it was the total that threw me off.

Mr. Yamada stated right, the small business association that does the education for fugitive dust and they actually funded that program and it was taken throughout the State.

Chairman Close called for questions. There were none. He called for a motion.

**Commissioner Reavis motioned to accept the settlement.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

**David Cowperthwaite stated it's our recollection here in looking at the records that in terms of the Lander County one, there was no second to the motion.**

**Commissioner Johnson seconded the motion.**

Chairman Close moved to **Agenda Item VIII. D. Advanced Crushing.**

Mr. Yamada stated Advanced Crushing operates a portable sand and gravel crushing plant. We first noticed them on January 30, 2002 when we got a fugitive dust complaint. They're working right out on the Northridge Subdivision in Carson City. We found that they had set up their operation without a permit. We issued a Stop Order and we had an enforcement conference in which we recommended an administrative penalty of \$600, at which they agreed to. But we didn't have a hearing between that time and now. We were out there again on May 31<sup>st</sup> and we saw lots of dust. I was actually out there too. I found that they had brought in a jaw crusher. They put it in front of their other piece of equipment. It wasn't permitted. The water controls were not hooked up so they were generating dust. I gave him another verbal Stop Order, had them come in, add that piece of that equipment to their COLA that they had gotten the last time for not having a permit, then we recommended a penalty of \$1,200 for that, to which they agreed to. So we're looking at two NOAVs for a total of \$1,800.

Chairman Close called for questions from the Commission and public. There were none. He called for a motion.

**Commissioner Johnson motioned for adoption of NOAV 1623 and 1670.**

**Commissioner Reavis seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. E. Oglebay Norton Industrial Sands, Inc.**

Mr. Yamada stated Oglebay Norton Industrial Sands operated a non-metallic minerals processing plant which consisted of a crusher, screens, conveyers, hoppers, silos, stockpiles in Fernley. We have had several complaints on them for a period of time for fugitive dust. But what we found out with them, I have to check in their permit, was they didn't perform what we call the initial opacity compliance demonstration which is basically someone coming in and reading the amount of fugitives coming off of the process. They really didn't want to come in for a face-to-face conference and they agreed to pay the penalty that we assessed for that of \$1,380. They had one previous violation which is a fugitive dust violation.

Commissioner Coyner asked are there any further complaints that you're aware of?

Mr. Yamada answered they've sold the business to Black Mountain Sands which is operating at the same spot. As far as that area, we get quite a bit of complaints from one person on a regular basis. He's complaining about the county road there that the trucks use and they keep asking the company to water that down, but it's actually the county road and it's actually used by the people that live along there. That one person keeps calling because he wants them to water the road for him.

Chairman Close called for further questions. There were none. He called for a motion.

**Commissioner Crawford motioned for confirmation of NOAV 1626.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. F. Polyone Engineering Films, Inc.**

Mr. Yamada stated Polyone Engineering Films is a polymer services company that produces a variety of flexible sheeting and laminates, thermal plastic olefin and urethane polymer films and laminates. Polyone came to us to file an application for a Class I permit to upgrade themselves from a Class II. During the review of the application it turned out that one of their printers had been previously licensed in the State of New Jersey and it was licensed with a scrubber attached to it. When it was licensed in California it didn't have a scrubber on it. So, it was looked into because removing a piece of emission controlling equipment off of a piece of equipment would be a violation of 40 CFR 60(fff). We entered into negotiations regarding the removal. Polyone agreed to pay a penalty of \$18,240 to settle the issue. They've gone into an extensive program to reformulate their inks to meet emission standards. They've also looked into the possibility of putting an RTO Regenerative Thermal Oxidizer on their system to get rid of the VOCs. They should be totally in compliance by February 2003. They've had no other violations in the last five years.

Commissioner Coyner asked was that piece of equipment first placed into operation in 1983 in Nevada?

Mr. Yamada answered I believe it was 1989.

Commissioner Coyner stated I don't have a specific question about this particular violation other than the fact that the time strikes me as a little long in that someone was able to operate a piece of equipment probably 13 years then if '89 is the correct date.

Mr. Yamada stated yes. I believe it was in '89, but it's a possibility because it depends on what is on the permit application. If we didn't know it was licensed to a prior jurisdiction and I'm not sure that when they did the

application they realized they brought in equipment without the scrubber or not. I mean it's a question about whether one should have been put on there or not and by . . .

Commissioner Coyner asked was it permitted with a scrubber in the original permit?

Mr. Yamada answered yes, in New Jersey.

Commissioner Coyner asked how about our permit here in Nevada?

Mr. Yamada answered it never was. When we permitted it, it didn't have the scrubber with it.

Commissioner Coyner stated so our permit, the scrubber wasn't required or it wasn't mentioned, or it wasn't part of the permit.

Mr. Yamada stated I guess the permitting people didn't know that there was a scrubber attached to it because we didn't have the history from New Jersey at that time that it was permitted there. It only turned up recently when we looked at the Class I permit and then went back to see if there was anything on that particular piece of equipment.

Commissioner Johnson asked this probably shouldn't be in this enforcement hearing, but doesn't this basically ask the question about the review of best available technology? I mean functionally it appears to me that this violation's discovered and tied to some existing permit application and not upon an engineering analysis of the piece of equipment itself.

Mr. Elges stated this particular issue was somewhat complicated because of the information that we found through a Class I application or a Title V application. That process as you know is much more in-depth than any other type of review process that we've undertaken and it's not uncommon for us to flush out some of these historical issues related to pollution control requirements or other applicable requirements and from my perspective I think that's exactly what's happened here is that in good faith both the State and the company have gone about their business accordingly over the years and simply by making this transition into the facility's request to permit this as a major source, it has triggered our requirements for doing more of an in-depth review.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He called for a motion.

**Commissioner Crawford motioned for affirmation of NOAV 1662.**

**Commissioner Coyner seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. G. Las Vegas Paving Corporation.**

Mr. Yamada stated Las Vegas Paving operates a temporary gravel and crushing screening facility and an asphalt plant in east Pahrump, Nevada. One of my inspectors noticed that Las Vegas Paving had set up their operations in Pahrump and upon a discussion with them, found out they didn't have a permit with us. They were given a verbal Stop Order and told to get a permit. That happened on June 21<sup>st</sup>. On June 27<sup>th</sup> the inspector went back and found they were operating the equipment although there was a Stop Order on them until the equipment could be permitted. Both times they found lots of fugitive dust being generated. We issued two minor violations: one for \$125 and one for \$250 for those two different days of creating fugitive dust. We held an enforcement conference with them on July 3<sup>rd</sup>. Based on the information they gave at the conference, we issued an NOAV 1673 for constructing and operating without a permit and 1674 for violating our verbal Stop Order. They agreed to pay a penalty of \$5,250 for violating the Stop Order and \$4,620 for operating

without a permit for a total of \$9,870. They've got the permit and they appear to be in compliance. We've had no other fugitive dust complaints.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Johnson motioned to accept NOAV 1673 and 1674.**

**Commissioner Crawford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. H. A & K Earth Movers, Inc.**

Mr. Yamada stated A & K Earth Movers is a company that operates crushing and screening and hot mix asphalt plants throughout the State of Nevada. They have a general permit with us. They had a COLA 1879 that was issued to them on April 22<sup>nd</sup> for their Desert Mountain pit. When we had an unscheduled inspection conducted there we found that they had erected a lime marination hot mix asphalt plant which were not included on the permit. So we told them they couldn't operate it, but it wasn't operating at the time of inspection. Looking at their records we found out that they actually had started operation June 23<sup>rd</sup> and had produced approximately 30,000 tons of asphalt as of July 17<sup>th</sup>. We held an enforcement conference on the 18<sup>th</sup> of July and we assessed a penalty of \$3,750 and they agreed to it. At the present time they're in compliance with all of the regulations.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Crawford motioned for affirmation of NOAV 1676.**

**Commissioner Reavis seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. I. Humboldt Ready Mix, Inc.**

Mr. Yamada stated Humboldt Ready Mix is a concrete batch plant which consists of a silo, a stockpile, elevated bin and weight hopper and they operate out of Winnemucca. On May 2<sup>nd</sup> an inspector conducted an inspection of Humboldt Batch Plant and upon review of their files we found out they did not do their initial opacity compliance demonstration which is that test that we have them do to make sure that they're not emitting fugitive dust above a certain opacity level. For that violation, we had a conference call with them. They didn't want to come in, drive in. They agreed to pay a fine of \$600 for that violation and they are in the process of getting the IOCD done. When that's done, they will be in full compliance with our regulations.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Reavis motioned to affirm NOAV 1658.**

**Commissioner Crawford seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. J. All Lite Asphalt, Inc.**

Mr. Yamada stated All Lite Asphalt has an air quality operating permit from us. What we found out about their permit was they also didn't do a source test for their facility within the 180 days that's required. It was actually required in October 24, 1999. After an enforcement conference with them we were told that the plant could not operate at this time because they didn't have any contracts for asphalt and were unable to test. We issued a compliance order requiring them to test as soon as they got a contract that would allow them to

run the proper amount of hours. We issued a NOAV for \$1,800 which they have agreed to pay. They don't have any other violations at the asphalt plant.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Crawford motioned for affirmation of NOAV 1651.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. K. Paul Moore's Sand and Gravel, Inc.**

Mr. Yamada stated Paul Moore's Sand and Gravel operates a gravel pit at Grizzly Stream on BLM land near southeast Pahrump in Nye County. They also build foundation pads for homes where they come in and grade and lay down the gravel material for the pads. They have an air quality permit at the pit. On May 8<sup>th</sup> an inspector did an unscheduled inspection and observed fugitive dust at their operations. On May 17<sup>th</sup>, 23<sup>rd</sup>, we also found fugitive dust at Equus Court in Pahrump where they were building pads. Each time we went there were no water trucks being used. We held an enforcement conference on May 30<sup>th</sup> to discuss violations of May 15<sup>th</sup>, 17<sup>th</sup>, and 23<sup>rd</sup>. We issued three NOAVs for those violations. Two of those NOAVs, 1667 and 1669 were minor violations and they were at Equus Court. We fined them \$125 and \$250 respectively. Those are not being dealt with today because they are minors. However, NOAV 1668 is a fourth violation and that becomes a major violation under NAC 445B.365. For that we assessed them a penalty of \$1,560 which they agreed to pay. We've had no more complaints about any dust.

Commissioner Crawford asked do you know how long they've been in business?

Mr. Yamada answered I don't have the exact date they started, but the owner passed away last year and his daughter is running the business now. The first time they came in to us they had no permit. They used to have a permit. They gave up the permit thinking they didn't need one anymore because they got rid of a crusher that they had. But they still needed a Surface Area Disturbance permit and that's why we actually found them in violation of permitting. They've had several fugitive dust problems. They seemed to have gotten the picture. They went out and bought another water truck and I think she's getting it together. She's running the business for her mother.

Commissioner Villaflor asked what happens with the next violation?

Mr. Yamada answered hopefully there won't be one. But, the price goes up for them because every time you get a violation there's a multiplier. It goes up by 5 percent. So if you get 10 of these your fine goes up by 50 percent.

Commissioner Villaflor asked don't you have any authority to shut them down for repeated violations of the same thing?

Mr. Yamada answered I suppose we could but I think we got their attention because they've actually gone out and got water trucks and they're making a big attempt to try to keep it wet all the time because we told them we don't want them back again because the Commission won't like it.

Commissioner Coyner asked after a certain time period, don't some of these things fall off in terms of calculating the percentages?

Mr. Yamada answered five years.

Commissioner Coyner stated five years, so it doesn't just keep going.

Chairman Close called for further questions. There were none. He called for public comment. There was none. He called for a motion.

**Commissioner Crawford motioned to affirm NOAV 1668.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. L. Tahoe Reno Industrial Center, LLC**

Mr. Yamada stated Tahoe Reno Industrial Center is a company that prepares land for development infrastructure, roads, utilities, water sources, etc. They're located 8 miles east of Reno, Nevada in Storey County. I think part of it might be in Lyon as well. We went there on a fugitive dust issue and we discovered they had two Surface Area Disturbance permits for the same development, which is quite large. But we only allow one permit per contiguous piece of property and these overlapped. We had them come in and change that to one permit. But they also had fugitive dust issues and we had the third and fourth fugitive dust violations for TRC and what happened is the fourth became a major and that's what we're dealing with today. And then on top of that we found that one piece of property that had been disturbed was not actually covered by the permit at all and we had to have that also added to their Surface Area Disturbance permit. We had a fourth violation which was a major. We also had disturbing a piece of property not covered by the SAD as the second violation. For the fourth fugitive dust violation we assessed a penalty of \$1,440 and for not having the piece of property under permit, \$690. The total amount was \$2,130. The TRIC has submitted a fugitive dust plan, which is a lot better. They've done a lot of things to try to fix the area up. They fenced off areas and have applied surfactants to the property to try to control the dust. At present they seem to be in compliance with our regulations.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Crawford motioned to affirm NOAVs 1671 and 1672.**

**Commissioner Reavis seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item VIII. M. US Ecology, Inc.**

Mr. Yamada stated US Ecology is a temporary storage and disposal facility. Their primary function is to stabilize, process, and dispose of hazardous waste. Their violation occurred when they ran their source tests for their systems and it turned out that they exceeded their CO, SO<sub>2</sub> and NOX emission limits for what they call low temperature thermal decomposition units. That's where they drive off the VOCs, temperature, and piece of equipment. They notified us up front. When you see the compliance issue in the back you'll notice they had a similar violation back in January of last year. Both of these occurred because of source testing. They came in and they couldn't meet the limits. They adjusted the limits and when they tested they couldn't meet them again and they violated the emission limit. We assessed penalties of \$760 for CO, NOX and SO<sub>2</sub> for each of those which came up to a total of \$2,380.

US Ecology has since changed general managers and they've come in with a completely new package. I think they've probably been issued permits by now. I don't think this is going to happen again. I think they cut their limits too close though the last couple of times.

Commissioner Johnson asked this is a, they exceeded their limits on a source test?

Mr. Yamada answered yes.

Commissioner Johnson asked they had been operating before that or . . .

Mr. Yamada answered yes. In our permits they are required to source test after 60 days of reaching maximum production, but not more than 180 days after issuance of the permit. This is one of the tests they had to run to make sure they were in compliance with the limits that were set. So this one was a re-test because they failed the first test.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Crawford motioned for affirmation of NOAV 1659, 1660 and 1661.**

**Commissioner Johnson seconded the motion.**

**Commissioner Coyner stated I know US Ecology is kind of out there. It's 12 miles southeast of Beatty, so it's sort of in the middle of nowhere. When you amended their permit to increase the limits, because they failed again, you moved the limits up again. Where do you stop moving up the limits for that type of plant? It's a fairly unique plant, isn't it, first of all? They handle stuff there that a lot of other people don't handle.**

**Mr. Yamada answered right. They weren't really exceeding the max on this thing. They came up with the number that they think they're going to be able to achieve. I don't know if they used the AP42, which is the EPA's general emission numbers for limits. But those numbers vary. I mean they can be 50 percent higher or lower because they are averages. So, they come in with either a manufacturer's emission limits or they come in using AP42 and their best engineering guess of what that's going to be and then they say, "This is what it is." It's analyzed by the permitting people to make sure they meet all of the State's requirements and if it's okay, they put it in the permit. But if they fail they come back with another number, they run through the same process again. They re-evaluate it to see if they meet all of the State's requirements. As long as they meet the State requirements for emission limits, they'll be okay.**

**Commissioner Coyner asked are we tiering our requirements off of EPA requirements for this type of plant?**

**Mr. Yamada answered we have both.**

**Mr. Elges stated I think you're correct. This facility is a little bit unique. They're not a typical process that we see much like, for example, a package boiler. We have a pretty good feel for what emissions are associated with those types of processes. The thermal de-sorption units that they have we really can't go to a reference manual of any type and see where numbers are referenced because they're just not utilized anywhere else that we're aware of. So this does kind of place the applicant in an interesting situation where they have to use engineering judgment, certainly the manufacturer and operators of those types of units that they purchase these units from. We worked very closely with them when those units were brought in originally and did question the emission levels that they were proposing along the way. I think what was interesting about this particular situation was we and the company worked to try to ensure that there was actually a buffer between the emission limitations that were set and the levels that they thought that they would actually be emitting at just to avoid a situation like this where they would potentially test these units and show exceedences. At the same time we're also balancing the different ambient air quality standards and any federal performance standards that might be required of the facility per unit. So there's a combination of different standards and requirements that we juggle in kind of this balancing act to ensure that overall processes throughout the facility, i.e., the other emissions that come from the plant in combination with these units in particular all work together not to exceed overall requirements.**

**So we went through this first round, the units were tested, they didn't meet the expectations. We met again with the company. The engineering firms that worked through development of these units thought that we had a handle on the emission levels and thought that the waste materials that they were actually processing, in conjunction with the pollution control devices that are on these particular units, would be able to meet the levels that we set the second go around. Unfortunately that did not happen. As Mike indicated, we believe we're at a point now where we've got these numbers up high enough in the permit that's been issued, but we are bumping up against the different ambient standards and some of the other standards that are set. So, to answer your original question of where do you stop, we're getting pretty darn close with this facility. There's just not a lot of wiggle room left here. But sometimes we have to go through this ratchet-up process, if you will, and again a lot of that just depends on the information that the applicant provides us along the way.**

**Chairman Close called for further questions. There were none.**

**The motion carried unanimously.**

**Chairman Close moved to Agenda Item VIII. N. Vanderbilt Minerals, Inc.**

Mr. Yamada stated Vanderbilt Minerals operates an underground bentonite mine and packaging facility near Beatty, Nevada. They also haul package material from their on-site warehouse. One of our inspectors noticed that there was fugitive dust coming from this area. It's not very easy to see this particular facility because it's hidden away. It turns out that this mine had been operating for a while and we didn't know that it was there. We found out that they really didn't have a permit. So we gave them a Stop Order and told them that they needed to come in and license this facility. They had been operating for quite a while so the administrative penalty reflects that. We assessed a \$5,100 penalty and they agreed to pay that. They're currently in compliance and they have three permits. We haven't seen any more fugitive emissions. We have no complaints about their operation and they have no prior violations. As a whole the company runs a pretty clean operation. We just didn't know that they were there until we saw the dust.

Chairman Close called for questions from the Commission and the public. There were none. He called for a motion.

**Commissioner Reavis motioned to affirm NOAV 1657.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

**Chairman Close moved to Agenda Item VII. Variance Request, Best Energy LLC.**

Richard DeLong introduced himself as being with Environmental and Resource Management. He stated I am here representing Best Energy LLC. Also here is Mr. Phil Solaro who is one of the owners of Best Energy. Best Energy is proposing to develop a waste oil re-refining facility in western Churchill County and it is located west of Fallon on the Lyon County line. He gave a slide presentation.

Initially the design of the project was a waste oil recovery facility using a vacuum distillation process where they take waste oil, remove the water, and then re-refine the oil to create resale products. In addition, a gas turbine co-generation plant is planned for the facility that would be powered by natural gas. Based on this specific design the location of the project required five key criteria and they included a good rail access, electrical transmission grid, a natural gas pipeline, good highway access and relative remoteness of the site, given the regulations that they were required to operate under.

This is a topographic map of the general vicinity of the project boundary located here. The facility would be located right up by this number 1. Rail access, located immediately on the western boundary. Electrical transmission line cutting through the property and a major gas pipeline also cutting right through the property.

Highway access located right down here along U.S. Highway 50. In addition, this area has very little development. It's very remote. Based on this, the site meets all five criteria they needed to develop a property, which finding this location in Nevada is actually pretty difficult. You'll notice numbers 1, 2, 3 and 4. Those are to reference the location of the following four photographs of the area.

This area right here is where the facility would be located. Immediately to the west is the rail line and behind the rail line is a load-out facility for a diatomaceous earth operation which is located on the other side of these hills. From the same location looking south, we have, you can barely see, the power poles for that transmission line. Right in this area is a parts recycling facility, junkyard if you will. From Highway 50 looking back to the north we have, again, that load-out facility is located right there. The parts facility here and there's a residence right in that area. From the same location looking west down U.S. Highway 50 we have some residences right along 50.

Approximately 19,000 gallons of dry waste oil per day would be processed at the facility. That would produce approximately 14,400 gallons of lubricating oil and slightly less than 2,000 gallons each of diesel fuel and asphalt extender. In addition, approximately 20,000 gallons of water would be produced as a by-product per day.

A quick view of the land of the facility. The loading and unloading would occur right in this area. The waste oil would be stored in these three locations, processed right here and the final product would occur would be placed in these eight tanks located right here. The lined process water ponds would be located here and the future packaging plant would be located in this area. This area where you have the load-out and loading facility as well as the tank area and the process area would all be constructed with concrete secondary containment.

Chairman Close asked how far are you away from the nearest residence?

Mr. DeLong answered I will get to that in a second.

Chairman Close stated okay.

Mr. DeLong stated it's approximately  $\frac{3}{4}$  of a mile. We're in the process of a Certificate of Designation. That was filed by Best Energy in late June, reviewed by the Bureau of Waste Management in the middle of July they denied the certificate for at that point four criteria: location of surface water, groundwater, there's a cultural site located where the facility is and residential use. It should be noted that based on your actions earlier today this issue on the cultural site has now gone away. The site was evaluated and determined not to be eligible for the National Register by SHPO.

An application for a variance was filed by Best Energy and that is what brings us here today. Best Energy believes that the issuance of a variance is appropriate for several reasons. First off, the Bureau of Waste Management concurs that the issuance of a variance is appropriate. A copy of their letter is included in the package that we've provided. In addition, the project has been approved by Churchill County through the issuance of a special use permit after the end of an extensive public review process that included several meetings with Best Energy as well as Best Energy meeting with a number of the residents in the area. In addition, the facility design mitigates the issues associated with the Certificate of Designation criteria.

Just briefly, running through those variance items. Groundwater, the average depth-to-groundwater at the facility is about 70 feet. The criterion for groundwater is 150 feet in the regulations; however, the design of the secondary containment for the tank and container storage area should be sufficient to prevent any release that would impact groundwater.

With regards to surface water, again the same map as earlier. This is a one-mile radius which is the distance of review under the regulations. We have the Truckee Canal, located in this area which is about  $\frac{4}{10}$ ths of a mile

to the west and then there is a lateral that crosses just on the northern tip of the project area out to the Slingshot Bench area.

The surface waters are both irrigation structures with regulated flows. In addition, both these surface waters are located topographically up-gradient of the facility and therefore any potential flooding that would affect the facility would be minimal. In addition, the flows are regulated so if there is a breach in any of those canals, the water can be shut off quite quickly. In addition, the design of the secondary containment and the physical layout of the area, meaning those surface waters are located topographically above the plant, would limit any potential impacts to surface water from any catastrophic release.

I'll just quickly go through the cultural one. Since SHPO has determined that it is an ineligible site, it's no longer an issue relative to the variance.

The last item is the residential unit variance. This green boundary is the project area which is also the zoning boundary for the industrial complex. This is also industrial zoning where the auto salvage place is located. There are two residences; one at this junkyard and another immediately to the west in this area. There are other residences located more than a mile away down to the south along Highway 50 which was shown earlier in the photograph and then a couple scattered here and over in this area to the east and west.

As far as the residential variance, both residences, or residents that are located within that 1 mile radius had been informed of the projects both through the special use permit process as well as direct meetings with Best Energy and information on that public review process is included in the package we've provided today as an exhibit. The resident at the car parts facility has said that they are indifferent to the project and in fact have actually wished Best Energy success in the permit acquisition process. The other resident, which is located to the west of the car parts facility, was concerned about the facility because she uses a road that goes north of the parts facility onto Best Energy's property to access her parcel rather than driving by the auto salvage place. She doesn't like driving by all those run-down cars. Best Energy has assured her that her access will be maintained through their parcel.

In conclusion, Best Energy believes that the requested variance is appropriate because of site-specific conditions and the project design minimizes any issues associated with that variance.

Commissioner Reavis asked what's the quality of the groundwater? You say it's 70 feet down there, what kind of quality?

Mr. DeLong answered that has not been tested at the site; however there are residential drinking water wells at each of those residences. So, they at least come close to meeting drinking water standards.

Chairman Close asked what happens to the water that is extracted from the process?

Mr. DeLong explained the water that is extracted from the process will be retained in that pond, used for dust control, a minor amount would be used in the industrial process, and the rest would be evaporated.

Commissioner Coyner asked why do you need natural gas there to do this process? You talked about a cogeneration plant. Is that just an add-on or is it actually part of the oil recovery process?

Mr. DeLong answered I neglected to mention it was a cogeneration plant that would be used to provide power and heat to the re-refining process. However, at this time because of the instability in the electrical market the economics aren't there to actually put in that power plant. They still plan on doing it when the electrical market settles down.

Commissioner Coyner stated but that's not integral to the waste oil recovery process.

Mr. DeLong stated correct. It is not.

Commissioner Coyner asked are any odors associated with the recovery process?

Mr. DeLong answered the vacuum distillation process is a completely sealed process. The facility will end up getting an air quality permit from the Bureau of Air Pollution Control primarily related to VOC emissions from the waste oil and product storage tanks.

Commissioner Coyner asked is the waste oil shipped in by rail, truck or both?

Mr. DeLong answered both.

Commissioner Coyner asked is the product shipped out by rail or truck or both?

Mr. DeLong answered both.

Commissioner Coyner asked when you've got containment for the storage on site, but typically there wouldn't be any containment for the railcars as they sit there or the trucks as they sit there?

Mr. DeLong answered there actually will be containment. That green area I showed over the tracks, there will be secondary containment built underneath the tracks. So those tanker cars or the trucks sit to be off-loaded, they would be on secondary containment.

Commissioner Coyner asked and 19,000 gallons a day represents about how many trucks or tank cars?

Mr. DeLong answered it's about one tank car or three or four trucks.

Chairman Close asked for what purpose would you have the air pollution permit? What comes out of the process?

Mr. DeLong answered the air pollution control permit would be primarily for VOCs that would be emitted from the tanks.

Commissioner Reavis asked what's the capacity of the used water basin? The processed water basin?

Phil Solaro answered we actually don't have that determined right yet, but we've planned right now for about a 5 acre pond.

Commissioner Reavis stated I started to say that you need to be careful in designing that to make sure that during periods that it doesn't evaporate, that it rains instead, that you've got plenty of capacity.

Mr. DeLong stated yes. We've been talking to the Bureau of Waste Management about that structure, that in all likelihood we'll probably also have to get an industrial artificial pond permit from NDOW to deal with that.

Commissioner Coyner asked will that pond will be fenced?

Mr. DeLong answered the entire facility would be fenced.

Commissioner Coyner asked would it be internal to the external boundary of the property?

Mr. DeLong answered yes.

Commissioner Crawforth stated my concern would be with the migratory birds because they're basically building this next to a marsh.

Chairman Close called for further questions. There were none. He called for public comment.

Lorraine Griffin introduced herself as representing herself and community land owners that are in opposition to the variance. She stated I would like to ask for a continuance on this hearing. The hearing was highly publicized from what I read here in Reno, Carson City, and Las Vegas. But to my knowledge there was nothing ever publicized in Churchill County and this facility is located in Churchill County and most of those of us in opposition use the Lahontan Valley News. This letter was mailed in Carson City to me last Friday on the 6<sup>th</sup>. The mail needs to go into Reno for processing and then come back out to Fallon. I received it at the Post Office yesterday. I've had no chance whatsoever to look at the variance or get it, nor have any of us that are in opposition had any opportunity to plan or speak our piece about this. I question this. Best Energy has also had past EPA violations from what I understand from the newspaper. I understood that at first they were rejected on this project. Another thing that I question about the groundwater, I own property at 13333 Carson Highway, which is within a mile and a quarter to a mile and a half. Our groundwater well is 16 feet deep, not 60 feet deep, or 70 feet deep. That's our main source of water for that location. The groundwater well next door is approximately 50 feet deep. This facility is definitely located uphill from us. That 5 acre pond that they are speaking about, there is an old natural drainage ditch. As you probably realize there are oftentimes when we have cloud bursts in the area and that old natural drainage ditch drains right to the back of, I can say the property owner's name, he has a green house that is right on the highway, and I think that that would be a definite risk at that point. There are only two residences within that 1 mile radius, but just beyond the 1 mile, I know the pictures looked rather bleak, but we are talking about only a mile and a half to just a little bit over from the Carson River. We're talking about agricultural lands. We're talking about water that goes down the Carson River and services all of Fallon and should we have wastewater get away from this plant, we're talking about a great deal of possible pollution. I would very much like to request that we have additional time so those of us who have strong feelings about this and have strong opposition would have an opportunity to present our side.

Commissioner Dahl asked was this proposal brought to the county and did you have an opportunity to address it?

Ms. Griffin answered the only time that I was notified personally was of the request to change from R-1. All of the zoning in this area, except for that 80 acres, is R-1. I was notified of the request to change it to manufacturing. But to my knowledge, I was never able to attend anything on any kind of a special use permit. If the use permit has been granted, it was certainly without my knowledge.

Commissioner Dahl asked was this taken to Churchill County Planning or to a County Commission meeting?

Ms. Griffin answered they were involved in the change of the master plan to change the 80 acres from R-1 to manufacturing. At the time I called and talked to the Planning Commission about that because we were in opposition because we did know that the wastewater plant was the ones that were applying for this. But I was told at that time that the only question involved in that meeting was whether the land would be re-zoned to manufacturing. They said that as far as the special use permit, that that would be a separate meeting and we could bring up opposition then. Now to my knowledge I have never been notified. The one other point I'd like to bring up is that (inaudible) which is a pretty highly populated area, by western Nevada standard, is directly in the wind path directly to the east of this facility. It's a couple of miles. But, nonetheless, all of those people I believe would probably be impacted with perhaps the smells. I mean has anybody been to Benicia, California? These places, refining companies don't smell very good and I don't think any of those people have been notified or asked for any type of community input. To my knowledge they have not.

Commissioner Crawford asked has Best talked to you at all?

Ms. Griffin answered no, not to me individually. Now they did talk to some people before the zoning for the property was changed. From what I understand there was a meeting that they held and invited some of the local

people to a restaurant I think. But to my knowledge this only had to do with the change of zoning on the property, not the use permit. If they've been granted the use permit as he says they have, then I'm in error and apparently some of us, quite a few of us were excluded from that because the property owners along the Carson River that are within a mile or mile and a half, none of us to my knowledge have been notified of a special use permit hearing for this company to go onto that 80 acres.

Commissioner Crawford asked are you and your neighbors south of Highway 50?

Ms. Griffin answered yes. We're south of Highway 50.

Commissioner Crawford asked but north of the river?

Ms. Griffin answered but north of the river, yes. We're along the river corridor.

Commissioner Dahl asked was the zoning changed for this 80 acres?

Ms. Griffin answered they did change the zoning. But I was specifically told that this was not the hearing for the use permit and that that would be a separate hearing and that we would be notified and we have not been notified.

Commissioner Dahl asked was a special use permit required even though the zoning was changed?

Ms. Griffin answered to my understanding the Planning Commission, which is Eleanor Lockwood heads up the Planning Commission, she told me specifically that it was not necessary to get anything together to object to Best Energy at that time. She said, "All we're doing at this meeting is changing the zonings from residential to manufacturing." It was my understanding that there was to be a separate meeting and that at that time that the community could voice their opposition or approval of Best Energy.

Commissioner Reavis asked was there a great deal of opposition to the change in the zoning?

Ms. Griffin answered you know I can't say in numbers specifically. I know that there were at least two letters that had been written. I know that there were people there in opposition that were perhaps, didn't quite understand what was going on and I can name several of them that didn't stand up and say something. Here again, the company was quite well organized. Most of us there are farmers, homeowners, or people who have to work for a living 8 to 5 and it takes a little bit more time for some of us to get together and organize our thoughts. We had no idea what was going to be proposed and when we went in we were shown maps and whatnot. Several of the people there were against it and voiced their opinion, I did. And then there were several people there that were in compliance. They felt that possibly it would evaluate their land. So it was mixed. But I'm quite certain that there are several people that I have talked to in the area that do not want to see a waste oil plant go into that area and are concerned about the environmental issues but have not an opportunity to voice their opinions.

Chairman Close asked is there another hearing that you'll have in the county relative to this matter?

Ms. Griffin answered I don't know that. I was told that there was to be another hearing but this gentleman has just now stated that he already has the special use permit. If he already has the special use permit, I at least was not notified nor were several of my neighbors.

Commissioner Johnson stated I have a question for staff. My question is simply on notice. Our requirements are just notice I assume that the company complied with then that has to do with in the media not within a specific distance or area surrounding a development?

Jeff Denison introduced himself as supervisor of the Hazardous Waste Facility branch. He stated the notice I believe she received was a mailing list we obtained from the county after the notice went out the secretary of the Commission sent. So that was sort of a superfluous outreach we made because we knew the county had some interest in the re-zoning issue. We didn't obtain that list until the last minute so it was late in getting out. But it wasn't part of the notice for the hearing today.

Commissioner Johnson asked it's not part of the legal requirements?

Mr. Denison answered right.

Commissioner Coyner asked Jeff, in your letter and I assume that the rest of the packet here is supplementary material including some Churchill County Board minutes and letters that came from folks and this is all materials that Best Oil is supplying to us. But there is a memorandum here dated August 28, so that's fairly recent, from you to Allen and in there first of all it states that they propose to process a maximum of 50,000 to 60,000 gallons and in the presentation today I heard 19,000 gallons. So that's changed in the course of less than three weeks, to less than two to three weeks we've changed that number by a third. I mean that's an order of magnitude change to meet. The other thing is in here it says that they're seeking approximately 1.5 million gallons of tank storage. One point five million gallons divided by 20,000 gallons a day, how many days' storage is that?

Mr. Denison answered I think the numbers I provide in that memo are from initial numbers when the co-generation plant was part of the proposal. I should have verified those numbers again with Mr. Solaro, but I had in my notes from the earlier meeting the numbers I provided in the memo. But, again I learned from the presentation today that those numbers are significantly less.

Commissioner Coyner stated things have been fairly fluid over the last couple of weeks. Rich, could you help me? Is it 19,000? Is it still 1.5 million gallons? Is that the plan?

Phil Solaro introduced himself as representing Best Energy. He stated the value of 19,000 gallons is the throughput of the plant of the oil process itself. Now when we get in oily water, the oily water comes in, it could be 85 percent water, 15 percent oil. So that's when we talk about the 60,000 gallons or 40,000 gallons that's the total product that we're bringing on to the site. A good percentage of that is in water. So as we go through the process we centrifuge off the water, the water is then processed through a water treatment plant and stored in the pond. It's used for cooling process and what's not used is evaporated. So those are the numbers that appear to be different, big number changes. But it's the matter that we could receive on to the process 60,000 gallons of water of which 15 percent of that would only be oil that would be processed through the plant to develop the 19,000 gallons of usable product. Does that make sense?

Commissioner Coyner answered you bet. And the 1.5 million gallons of tank storage, that's still a good number?

Mr. Solaro answered it's strictly storage. It's storage tank capacity. If for some reason we do take the plant down from time to time periodically and if we're receiving 22,000, 23,000 gallons of oil a day in oil cars we off-load it, store it in the tanks and then it's processed through the plant. So we've held in storage enough to handle the downtime of the plant while it's under maintenance and everything so that then we can pick it up and move on from there.

Commissioner Coyner asked about how many tank cars is that, 1.5 million gallons?

Mr. Solaro answered I never figured it out, but there's about 22,000 gallons to . . .

Commissioner Coyner stated well I heard earlier that you were talking about 1 tank car a day, but it seems like I don't know I'd have to do some thinking.

Mr. Solaro stated well there's roughly 22,000 to 26,000 gallons of fluid in a tank car, so . . .

Commissioner Coyner stated 22,000 gallons against 1.5 million, so you're still talking an awful big capacity for, if you were talking about 1 tank car a day. I'm kind of visualizing the amount of activity and the amount of processing that's going to go on at this plant.

Mr. Solaro stated the basic number that you really want to look at is the 19,000 gallons throughput through the plant. That's what the plant can put through it. Now we do have the storage tank capacity there and incoming tanks if we have three tanks involved in this, we have one for what we call waste oil which would be oily products that come in like from the Jiffy Lubes or Minute Lube or that sort of thing. That is basically the waste oil product. The other product that we'll be receiving will be what we call an oily water and the oily water is oil that's mixed with water that's used in cooling processes for milling operations, machine shops, and all that kind of stuff. So we have those two tanks set aside and then we have a third tank that's a swing tank. If one of those tanks filled for any reason, we would be able whatever product is coming in into a third tank and use it as a swing tank to just store what's in excess of what we have capacity for.

Commissioner Coyner stated just as a note, again this memo says that most of the material would be State-regulated hazardous waste originating in California. Is that correct?

Mr. Solaro stated well that's probably true because most of the waste oil that we'll be receiving will be from California.

Commissioner Dahl asked is there an odor associated with the process?

Mr. Solaro answered actually the process that we have is a vacuum distillation process and all the storage tanks and everything will be tied into the vacuum system and the VOCs that are coming off the tanks which would produce the odor are all being put back through the burner that's providing the heat and through the thermal catalytic converter. So there's really no odor coming off the plant.

Commissioner Crawford asked what's the quality of water that's going to be in the pond?

Mr. Solaro answered as we take the water off the process we run it through a regular commercial water treatment facility, put it in the pond, the pond will be capable of using water that can go back into our process in the cooling tower for cooling, be used for irrigation water and anything else we wanted to use it for. We're maybe going to use it for the irrigation water, the cooling water, and then the watering the road in the Bangle Road from the highway into the plant.

Commissioner Crawford asked so it will still have some petroleum in it?

Mr. Solaro answered it should not have any petroleum products in it. It'll all be air stripped off and put back into the thermal catalytic converter.

Commissioner Crawford asked is the design such that there will be full containment of this water and any other products you have on site if there's an accident?

Mr. Solaro answered yes.

Commissioner Crawford asked and it's designed for local flood events to disperse around or away from your facility?

Mr. Solaro answered any kind of a local flood event, say we had a catastrophic failure of the Truckee canal, which is located above and to the west of the facility, if that canal breached for example just the topography of

the ground up there it runs into the elevated railroad and it would disperse along the elevated railroad. So I don't think we'd have a problem there. Say for example we get a nice rainstorm and the water is in the containment basin, so that water is all pumped off and run back through our process.

Commissioner Dahl asked do you have everything you need from Churchill County in order to begin construction on your project?

Mr. Solaro answered everything but a building permit. Just to answer the questions on the hearings that seem to be a little bit confusing right now but we applied to Churchill County for a change in zoning from not an R-1, it's not zoned R-1, it's zoned what they call rural resource to M-1 and we asked for that and the County Planning Commission at the public hearing, that's basically where the list that we gave Jeff came from. It came from the county, that's their mailing list that they mail to the property owners advising them of both the hearing for the zone change and the special use permit. So we had the zoning hearing and the County Planning Commission recommended that the zoning be changed to industrial. At that time there was a series of questions that came up from a lot of the residents that were there and we had a meeting prior to the County Commissioner's meeting for the zoning request and invited all the people that were interested in sitting down with us and discussing more details about the plant. We did have that meeting in Fallon. Tom Lamell and Ron Simms from the planning commission were there with us and we discussed all the problems that people were concerned about at the plant and went the next day to the County Commissioner's hearing. The County Commissioners approved the zoning change. Since then we've received a special use permit. The same mailing list was used for the special use permit and in addition to that, we received abandonment of the Bangle Road as it passes through the plant. That abandonment will take place at such time as we file our parcel map for the sale of the property to us from Newmont Gold Mines. The new road alignment is shown on the parcel map, will relocate and realign the road. Those are the permits that we received from Churchill County and we still have the building permit to receive from them.

Commissioner Dahl asked do you know how many property owners were notified? Was it just the adjacent property owners? Or what was the area that, how far from your . . .

Mr. Solaro answered I think that's a list of about 30 people or so.

Mr. DeLong stated on the last page in the document we handed out which has this cover, is a copy of the mailing list that was used both for both zoning meetings as well as the special use permit hearing.

Commissioner Reavis asked your special that you had before the Board of Supervisor's meeting?

Mr. Solaro answered yes.

Commissioner Reavis asked was this the list that was also used (inaudible)?

Mr. Solaro answered no, actually I think that you'll find in there letters to each individual property owner that had indicated that they wished to speak with us in addition to that and we took that list that we had that night from the Planning Commission meeting and wrote each one of those and invited them to a meeting that we had especially for those people to discuss additional interest that they had.

Commissioner Reavis asked was that meeting pretty well attended?

Mr. Solaro answered yes.

Chairman Close asked was this lady one of the people on the list?

Mr. Solaro answered no. I've never met this lady before. I don't know whether she's on that list or not. I assume she is because she got a notice of this meeting because that was the list we provided to Jeff as to who was notified for these meetings.

Ms. Griffin stated I was never notified. Is my name on that list?

Mr. Solaro stated I'm going to have to guess so because . . .

Ms. Griffin stated I'd be interested in whose names were on there because (inaudible).

Chairman Close stated it appears about mid-way down your name appears.

Ms. Griffin stated I did receive the notice on the first meeting on the change of zoning, but to my knowledge the people I've talked to on here that I know as far as the special use permit is concerned I was never notified. I see several names on here that I doubt were notified. Mr. Meyers owns the property right next to me and he was never notified. We're, I don't know what the legal thing is, but we were not notified. We were in opposition in the first meeting and apparently we weren't notified about the use permit and I was specifically told by the county that there would be a separate meeting for the use permit and that we would be able to voice our opinions at that time. We were not able to.

Commissioner Johnson stated the counties have very limited notices on special use permit often. They're adjacent property owners are a quarter mile or something of that nature and they normally stick fairly closely to that. In a rural area where people are more disseminated they often line of sight and thinking themselves adjacent are actually outside the legal notice. It's always a concern of mine in these types of things that we don't really get the message out to everyone who feels that they would be affected by it and I think probably in this case for this meeting that's also part of what happened at least one day or two day notice doesn't appear to be (inaudible). It's fairly extensive and a lot of work that you've done on this project and the information is difficult to review in that short a period of time. But I don't know, I guess from my standpoint to question there are still permits to be issued and those permits normally have occasion for public input also. Is that true?

Mr. Solaro stated I believe that's correct.

Commissioner Dahl asked there are other permits to be issued you say?

Commissioner Johnson answered the air quality, the NDOW pond, and other permits, operating permits I believe that are still to be issued or considered? Is that correct?

Mr. Solaro stated that's correct. All of our operating permits are to be issued.

Commissioner Dahl asked but will there be any notices associated with those permits to property owners?

Commissioner Johnson answered in the newspaper.

Mr. Emme stated this variance process and the certificate of designation process within the hazardous waste regulations is kind of a preliminary step of showing that you meet or can mitigate the siting criteria. That's all preliminary to even applying for a hazardous waste permit which is the next thing that they have to do in addition to obtaining air quality permits or a Nevada water permit, those sorts of things. The hazardous waste permit would require some fairly extensive public participation process and is probably the best opportunity to mitigate some of the concerns that may exist beyond simply location.

Commissioner Johnson asked if this lady, Ms. Griffin, submits a letter asking to be noticed specifically no matter what other criteria, she would be noticed?

Mr. Emme answered sure. We have this mailing list. We'd make every opportunity to notify the community in the vicinity of the proposed facility.

Ms. Griffin asked could I ask another question? The statement that the groundwater level is 70 feet. I'd like to know if this has been evaluated by some engineering group or something? I have a problem with this because of our well being 16 feet deep and the neighbor's well being between 16 and 80 feet deep. So is this the board that is responsible for the environmental protection that has to do with these statements? Do we have proof that the groundwater level is 70 feet? I'm not familiar with the criteria, but these are the types of things that I think the group in opposition would like an opportunity to address or to ask or to try to find out about. We're just farmers. We're just people living there. And your comment about the legal requirements of notification, I understand that's very true. This was published in Las Vegas, in Carson City, and in Reno. And that's fine, but people in Fallon don't get into Las Vegas, Carson City and Reno very often and this is our world. This is our lives and our future and the value of our properties. So, I'm not talking about legal things here. I'm talking about the moral responsibility in doing the right thing. I think all of you gentlemen are certainly very much committed to doing the right thing and this is what I'm asking for.

Mr. DeLong stated I'd like to touch on one item she brought up which was the groundwater level since that was the one variance item she did touch on. Her home is located next to the river where the ground does slope to the river, water is generally shallower there. The facility is located approximately 1-1/2 to 2 miles north of her site both topographically up-gradient as well as a distance from the river. You would expect the groundwater to be deeper at a higher elevation which is the case. The water levels were determined based on driller's logs that were filed with the Division of Water Resources.

Commissioner Johnson asked these well logs are adjacent wells to the other residences or did you perform an actual test yourself?

Mr. DeLong answered we looked at driller's logs from entire surrounding areas, Swingles Bench down to the Carson River, both east and west of the property and looked at the wells that were closest to the facility.

Commissioner Johnson asked and you are the independent contractor on this?

Mr. DeLong answered yes.

Commissioner Johnson asked certified?

Mr. DeLong answered yes. For what it's worth, I'm a CEM in the State of Nevada, also a registered geologist in California.

Chairman Close stated Ms. Griffin indicated that there is a channel that runs down through where you were going to have your pond established. Is that . . .

Mr. DeLong answered there is a topographic swale that does cross the facility in a generally west to east direction which ends up meeting the flood plain near the Carson River around Bangle Road which is approximately a mile and a half northeast of where most of the residences are. The facility would be required either under the storm water pollution prevention plan that they'll have to get, or the spill prevention SPCC plan to control surface run-on and surface run-off. There would be diversion structures to assure that any storm flows don't go through the facility, they would go around the facility.

Commissioner Coyner stated Rich a question for you on your packet. I see there are some meeting minutes in the back of the packet for the special use permit and I have a pencil note at the top that says May 2002. Is that accurate? Is that when that meeting was held?

Mr. Solaro answered I believe that's correct. That's the meeting. Those were taken out of context if you will. I mean they were taken from the entire meeting.

Commissioner Coyner stated a piece of them, sure, but that meeting was held in May of 2002 and you appeared for the special use permit at the time and I note there's some comments that were made and there were opportunities for public comment and there doesn't seem to be much in the way of public comment in that meeting minutes.

Mr. Solaro stated most of the public comment on the facility was at the first zoning hearing with the Planning Commission. Most of those fears were allayed when the residents met with Best Energy prior to the County Commission's hearing to ratify the zoning. There was essentially no comment at the special use permit.

Commissioner Coyner asked do you know when the zoning hearing was held? Prior to that I would assume, right? April, March?

Mr. Solaro answered it was May and then we met in . . .

Mr. DeLong answered we don't have the dates off the top of our head, I'm sorry.

Mr. Solaro stated I don't have the dates off the top of my head either, but . . .

Commissioner Coyner stated it looks like there's been at least a five month time frame in existence here for some of this Churchill County process to go forward I would say at a minimum.

Chairman Close called for further questions or comments. There were none. He declared the public meeting closed and called for discussion among the members.

Commissioner Dahl asked did we receive assurance from the staff that when the hazardous waste permit is applied for that there'll be another effort to notify everyone? They'll have an opportunity then to voice their objection?

Mr. Emme answered yes, we can certainly commit to mailing that mailing list and using other means available to notify the community including publication of notices in the local newspaper. That's all standard procedure anyway. I do want to make clear, though, that when we get to the point of reviewing a permit application we're not talking about location at that point. That's kind of the issue on the table today and was the issue before the county in the prior hearings at the local level. We'll be talking about management requirements and technical requirements in terms of dealing with hazardous waste and process requirements and things of that nature.

Chairman Close asked Dave, when you mail out that notice, will you talk to Ms. Griffin to see if there's somebody else who is not on this list that's in the packet here. She mentioned her neighbor, his name was not on the packet on this list of people that we send out notices to. Would you inquire of her if there's anybody else to send notices out to who are not on this list? Maybe you'd do that today before she leaves.

Mr. Emme answered sure, we can do that.

Commissioner Coyner stated a question for Dave, this is news to me, but Jeff said it so it must be true, NAC 444A.476 requires the Division to make a recommendation to the SEC on various requests and in here he advised making a favorable recommendation. Do you still stand by that right now?

Mr. Emme answered yes.

Commissioner Villaflor asked worst-case scenario, how safe is the groundwater and surface water especially the proximity to the river? Also, in some forms of oil they may contain some other hazardous material like PCB. How can you be sure that they don't get into the soil and affect the groundwater and surface water?

Mr. Emme answered the certificate of designation process deals with facilities that treat, store or dispose of hazardous waste. We didn't make any attempt back 10 years ago when those regulations were adopted to distinguish between those different activities: treatment, storage or disposal. But I would suggest to you that there is an obvious distinction and that the primary concern that comes into play in terms of groundwater in particular with hazardous waste facilities with a disposal facility, not necessarily a storage a facility which is what we're permitting in this process. They're going to have tanks that have to meet technical standards for storage of hazardous waste that provides one line of defense. And then secondary containment that would have to contain the quantity of the largest tank on site, which provides kind of a second line of defense. So I think you know there's, the worst case I guess could happen and all the tanks fail and there's a release. Then it has to be cleaned up and taken care of at that point. But from our standpoint, that's a pretty unlikely scenario.

Chairman Close called for further questions. There were none. He called for a motion.

**Commissioner Dahl stated I think I'll make a motion and maybe just a comment before I do but I think that recycling especially these products is important. It's necessary that it be in as remote an area as possible, but as we've been told it has to have a railroad and a highway and so on. I'm concerned that everybody didn't get a notice and an opportunity to express how they felt about the location of this and with the assurance of the staff that they are going to be well notified on following hearings I would move that we approve this application.**

**Commissioner Crawford seconded the motion.**

**Commissioner Villaflor asked is this just an application process right now and it does not allow them to operate or construct already or just apply for one?**

**Chairman Close answered I think this application just allows them our Commission declares this to be an appropriate site for this location, for this operation. They have other permits to go through, but as Dave said this decision will allow them so far as we are concerned to construct it there. They have to go through other application processes and if those are successful then they will be able to build their plant.**

**Commissioner Villaflor asked would it not be unfair to them to let them start building and (inaudible)?**

**Chairman Close answered I don't think they plan on starting building. They don't have enough permits to start building anything yet.**

**Commissioner Crawford stated Mr. Chairman I wonder if Commissioner Dahl would agree to add to the motion that our granting of this variance is conditioned on Best's written determination on the recycling activity and obtaining all other necessary permits.**

**Chairman Close stated I guess we could do that although if they don't get the other permits, this is moot.**

**Commissioner Crawford stated but that's the staff's, I'm kind of trying to play into the staff's recommendation here. That's why I said that.**

**Chairman Close stated I think without getting their permits they don't do anything regardless of what we do. But I understand what you're saying.**

**Commissioner Johnson stated it's kind of, in having dealt with land use things on a Planning Commission basis as a commissioner in the past, the decision here is not to approve their operation. It's our determination that this site is appropriate for this type of use and I think from the criteria in the**

reports I've seen from my standpoint I think that I would probably vote for the motion. I have serious concerns that there were people affected and potentially to be affected that didn't and haven't received adequate notice of the determination and we don't have evidence for the special use permit, but I think it's for me a very telling point that this is not simply a technical legal notice as I'm sure that the Churchill County, the applicants did the legal notice part of the thing, but I think the community has a right to see and speak to this issue of whether that site is suitable or not and this is kind of their last chance to have said that. In the future they'll be talking about whether there are emissions, the control is appropriate, whether the waste pond is appropriately licensed and that sort of thing. But the issue before us is simply is this use appropriate for this site and I will vote against the motion today and I would prefer to see it continued. I think as I've mentioned that I would approve the site, but I would like to hear more.

Chairman Close stated I think I would join with Joe. I feel that I would likely vote in favor of this proposal. I think it's a good proposal. I think you've done a lot of work on it and I think it makes sense to have it where it is. I am concerned that people who are fairly close to the site evidently have not received notice for whatever reason. And I also would feel that by postponing it to our next meeting that that would give those people who have not had a chance to come and testify to testify. Unless something dramatically changes from what has been said thus far, I would vote for the proposal. But I think it's appropriate to let people especially when it's going to be a project near to their place where they live they have a chance to make comment.

Commissioner Coyner stated the point being I think that the public has had adequate notice and adequate time to decide this at the local level where these types of matters need to be settled. There's been at least a five-month time line. They've had at least three opportunities in Churchill County to make their voices known at the three different special use, the zoning change and I guess there was one other meeting that was mentioned here. So, it seems to me this has come to us now after sort of being matured at the county level and now we're going to say that because one individual came before us today and said they didn't get notice and their evidence that they did get noticed that we should somehow stop the process. So I will vote for the proposal or the proposed variance.

Commissioner Reavis stated Mr. Chairman as Joe pointed out, we're not approving this facility. It's not that we're saying, "Alright go ahead and start building this thing tomorrow." There are a lot of hoops for this company to jump through and a lot of opportunities for people to sit and say, "Alright I object to this." And maybe they have a valid point. And so I guess I agree with Alan. I think probably they've gone through enough.

Chairman Close asked for other comments. There were none. He asked if there was a second.

Commissioner Crawford stated I seconded it. I was just wondering if Commissioner Dahl wanted to put in the other language that's from staff.

Chairman Close asked put in the language that appears in the staff's recommendation? If there's no objection Demar we'll add that appropriate language to it.

Commissioner Coyner voted yes.

Commissioner Crawford voted yes..

Commissioner Dahl voted yes.

Commissioner Reavis voted yes.

Commissioner Villaflor voted yes.

Chairman Close voted no.

Commissioner Johnson voted no.

The motion carried.

Chairman Close stated the next matter would be **Item No. IX Rules of Practice of the Commission.** I think we ought to take a look at it but I think there's still some work that needs to be done before it can be adopted and we are looking at Item No. IV on our log. **Also, in that motion, if there's no objection we'll accept Exhibit No. 9 and Exhibit No. 1 which are the presentations of Best Energy as part of our record.**

David Cowperthwaite introduced himself as the executive secretary of the Environmental Commission. He stated before you today is a public workshop regarding the rules of practice of the Environmental Commission. This is a regulatory workshop that is designed to allow both the Commissioners as well as the public as represented in this room to be able to state their feelings or perceptions about any proposed changes to the rules of practice of the Environmental Commission. The rules of practice of the Environmental Commission are based upon Nevada Revised Statutes 233B. This is the Administrative Procedures Act. In the Administrative Procedures Act is a citation that indicates that any agency that does rule making is to be able to have rules of practice to be able to guide that process of how they conduct their business. We generally perform an annual review in the Commission. It's only required every three years. Every three years a statement has to be filed and there has to be a review of the rules of practice of the Commission. But by nature we do this every year to be able to not only update the three year clock, but also to give an opportunity to reflect upon the existing rules.

This package comes out of the set of appeal hearings that the Commission has held as well as probably some general regulatory and variance hearings that the Commission has held in the past two years. The proposed rules, there's actually not proposed rules, there's no regulatory package that is available to you yet. What happens is you see a set of drafted language that sort of provides guidance in terms of development of a petition. So the outcome of this session here will be your indication whether to proceed with the development of actual proposed set of rules that could be, then come back to you as a temporary regulation for adoption.

This rulemaking affects both the appeal and general regulatory hearings. They focus upon the issues of due process and rights of the Commission to act during, before, during and after hearings. Again, the last appeal hearing that we had in April 2002 indicated that we had certain weaknesses and gaps in these rules. This is an attempt to be able to sort of fill those gaps. Issues raised in this whole process included trying to get more clarity and focus on the issues being raised by appellants. The device that will come before you is the issue of pleadings, briefs, stipulations and written testimony. Other issues raised included trying to get a process in place to handle third parties and how to better get the subpoena process so that the Commission does have to better function and this will be proposed too by adding more of a due process to allow interveners and to clarify how subpoenas are being issued. Another issue dealt with the issue with how to deal with unruly parties at hearings. This is manifested by having rules of conduct and also by dealing with the issue of repetitive testimony or repetitive examination of witnesses.

Another issue raised is dealing administratively with the demand for transcripts. It is being proposed that the Commission get out of the process of having to produce transcripts, yet provide a due process for people to be able to access the record so that they can produce the transcripts necessary to deal with contested hearings.

Exhibit No. 4 is a brief summary of what is in the opening statements. What I'd like to do at this point is review each of them. If we want to go back through each of them and discuss them more thoroughly or add or subtract, that is certainly the Commission's pleasure.

Section 1 deals with pleadings. This section focuses upon the consolidation of similar appeal petitions. It limits the number of witnesses, requiring a party to submit a pleading to verify the pleading, a requirement for service when submitting a pleading and allow for correction of pleadings. Pleadings are in the section, which is a brief, and allows the Commission to order briefs of hearings and for a requirement of service when a brief is submitted. Sections 1, 2 and 3 consolidate together. It allows a fabric in place to be able to begin to work with those parties that come to the Commission, primarily in contested cases so that these issues can be brought on paper and be clearly articulated. So that's the purpose of the brief process and to allow for development of a process for the Commission to order these to be made and brought about.

Section 4 deals with the issue of written testimony. It allows testimony to be submitted in writing and summarized at a hearing, but also allows for cross-examination of it. Written testimony is submitted as an exhibit and it also requires due servicing notice in terms of this particular section.

Section 5 allows stipulations of known facts. It allows the Commission to independently validate these facts.

Section 6 provides for a process for interveners into a hearing including the filing of a petition to intervene. It allows the Commission to determine who is to intervene and the contents of a petition to intervene are defined. The rights of parties are clarified. It explains the rights of the party of record to the proceedings especially of a contested hearing. It provides for a control of hearings and exclusion of unruly parties if necessary.

Section 9 clarifies the process of issuing subpoenas, placing the role of issuing upon the Chairman and Vice Chairman of the Commission and provides for a due process to squash or deny subpoenas as necessary. It also proposes a process of depositions of witnesses.

Section 10 amends the existing rule of practice. It requires the party requesting the subpoena be responsible for preparing and serving the subpoena so that way the Commission gets out of the business of having to serve the subpoenas. Under this proposal, if a party wants a subpoena they have to come to the Commission. In this case I think it's the Chairman who makes the determination of whether to proceed with it or not and then it's executed and given back to the party and then they have to serve it. So the Commission gets out of the business of having to pay the cost of serving a subpoena.

Section 11 provides the Commission control over repetitive testimony being elicited for witnesses.

Section 12 provides for a process to provide transcripts, and yet at the same time, it gets the Commission out of the business of having to prepare contested hearing transcripts.

My methodology was to not only work with the Commissioners, but also look at various rules of practices for the Labor Commission, the Board of Notaries, the Board of the Wildlife Commissioners, the Board of Health, the Public Utility Commission, the Taxi Cab Authority and the State Water Engineer.

Commissioner Johnson stated the last least are first, but transcripts there are under our chapter some statutory requirements on the cost of appeal hearing transcripts and they refer to the cost of producing them.

Mr. Cowperthwaite asked so you're saying that this will essentially contravene statutory?

Commissioner Johnson stated I believe it. There is a section in our chapter on transcripts dealing with powers of the Commission that talk about charges for transcripts.

Mr. Cowperthwaite stated right. Yes.

Commissioner Johnson stated and I think that's on appeal hearings.

Mr. Cowperthwaite stated yes. We can certainly go back and look at that and assess that. Again, the purpose here was to, not have to be in the situation where somebody is saying, "Oh, gee whiz, I lost my case and I don't know what I want to do, but I want a transcript." Well, you know, if you have an all-day hearing or a two-day hearing, that's two or three weeks of time of staff resources to have to be able to produce it.

Commissioner Johnson stated I think the statute says, "You will transfer the cost of producing to the person (inaudible)."

Mr. Cowperthwaite stated right. Our issue was trying to be able to find a cost effective mechanism. But we can certainly revisit that issue.

Commissioner Johnson stated on a separate issue that's not included here, but ex parte communication on an appeal subject.

Mr. Cowperthwaite asked do you want to address that one?

DAG Gray stated that's always prohibited. I suppose it doesn't hurt to put it in there as a regulation if that's something that you're interested in doing. It would be pretty easy to create language on that. But, as an ethical basis the Commissioners should know better and any attorney or counsel should also know better. So, it's sort of a given, but that's something that we could easily do.

Commissioner Johnson stated I think it would be useful to have it so you could waive it at somebody because I think all the Commissioners have had occasion to have people talk to them about issues.

DAG Gray stated I think it's most important in your contested cases, as opposed to . . .

Commissioner Johnson stated regulatory, right.

DAG Gray stated regulatory, people coming up and say, "Oh, I want to talk to you about this issue that's going to be on the agenda" or something. That's less of a concern as opposed to a contested case where you're more of an adjudicator.

Commissioner Villaflor stated in the last appeal process that we were in April there was also a recommendation of having the appellant shoulder some of the cost for the cost of the appeal. Has that been addressed?

DAG Gray answered that would have to be a statutory change.

Commissioner Villaflor asked it would have to be a statutory change? It was pointed out at the last hearing about the average cost. What was the average cost for the two-day hearing?

Mr. Biaggi stated I know that this has been an issue and I share the concerns because believe me it impacts our budgets greatly. I think it's a slippery slope to go down, however because you start to get into environmental justice type issues and issues related to disadvantaged communities and people who may not have the money. The issue then becomes are you excluding these people who may not have the money from their appeal rights? So it's something that I'm very sensitive to and I would want to move very carefully on. I agree with Susan that it's probably a statutory change rather than a regulatory modification as we're contemplating with these changes that David has brought before you today.

DAG Gray stated the legislature has given broad appeal rights to pretty much anybody and that signifies their opinion that anybody should be able to bring an issue before this Commission which would lead me to believe that they then wouldn't expect those people to pay for it based on what Allen is saying.

Commissioner Coyner stated as most of you know this arose from the results of appeal hearings held in the recent past, especially last April, looking at our Rules of Practice and how we might begin to get more control over those hearings. I view it as somewhat preemptive in that if we get a better Rules of Practice in place we may be able to head off what could snowball into a much higher level of cost and responsibility for us. So, Joey to your question, we looked at a very long laundry list of options including bearing costs and so forth and then tailored that to the ones we felt we could most effectively implement. So that was certainly considered. I'd like to thank David and Susan for their hard work in putting that together. They did do a lot of work behind this. I appreciate that.

Chairman Close stated I think after you've had a chance to read those if you have any further comments you can submit them in writing and give them to David and he can take them into consideration.

Commissioner Johnson stated I think just to compliment them for the effort for the geologist here, it seems quite a good exercise. I mean I had real concern when we were going into this, but some of the issues that have been brought up, I have really concern that in the process of trying to control that we exclude people who would normally have a basis to come before us. I think that there's a balance that we need to reach in this area and I'm quite pleased with what you've done.

Mr. Cowperthwaite stated what I've noticed in the process is that there's been a lot of like due process issues. For example, the issue of dealing with interveners. I mean we've never really in the past had to deal with the issue of interveners so there was an example of trying to set a mechanism in place that clarified how that was going to be played out yet, at the same time giving the Commission control over that hearing in terms of who is sitting at the table. In the case of the hearing in April, it certainly was indicated and there were some very forceful entities that wanted to show up at the table. So the Commission, through a process of doing various orders, was able to sort of get to there, but it was a very painful process to have to engage. That's not to say that the process of dealing with interveners wouldn't be a painful process at some point, but at least there would be a due process to be able to walk through the experience.

I think another issue that has come up in the past but really hasn't surfaced very strongly is the issue of subpoenas in dealing with clarifying who is going to do it. Subpoena is a very powerful process and it can be very intimidating to do it. So there's a real importance to make sure that when that process engages that everybody understands how the game is going to be played out and how the Commission perceives its responsibility in that matter.

Chairman Close called for further comments. There were none. He stated I think you've made good progress. I think we need these rules. I think it's very good. Thanks.

Mr. Cowperthwaite stated I guess at this point you want me to go ahead and proceed and come back with the regulatory package at this point for temporary rulemaking probably at the next hearing?

Chairman Close stated correct.

Mr. Cowperthwaite stated okay. Will do.

Chairman Close moved to **Agenda Item IX. Discussion on Air Pollution Control Permitting Fees for Solid Waste Landfills.**

Mr. Elges stated in 1990 the Clean Air Act was amended to include sweeping changes for sources of air pollution. Congress created an operating permit program to ensure better compliance with air quality requirements and to allow for more thorough air pollution control. With Title V of the Clear Air Act amendments, Congress adopted measures that require all states to develop and implement operating permits of programs. Nevada's Title V permit program has been in place since November 1996 and received full approval in November 2001. The permits issued under Nevada's programs are referred to as Class I permits. Sources that are required to file applications for Class I permits are defined as major sources. Typically when people think or talk about major sources, sources like power plants or large chemical manufacturing facilities are typically what come to mind. These sources generally have larger quantities of emissions that are associated with their processes.

The U.S. EPA also considers other smaller sources of air pollution to be sources that need to be permitted under the provisions of Title V as well. These are new provisions that are being adopted by the State and had we been able to go through our package earlier this morning I think we would have seen a number of these provisions that were being proposed at the time. Many of the new revised source regulations being promulgated by EPA are requiring smaller sources to file applications for Title V or, in Nevada's case, these Class I permits. Even though many of these sources emit smaller quantities emissions they are still defined as major sources. More recently some of Nevada's larger solid waste landfills have become subject to the

Class I requirements because of changes in federal regulations that require them to file Class I permit applications.

Landfills that have a capacity of 2.5 million mega grams or 2-1/2 million cubic meters or more are required to submit Class I applications. The Bureau of Air Pollution Control believes that there are currently at least three landfills within the State's jurisdiction that meet the design capacity criteria. The three landfills currently working with the bureau are the Lockwood Landfill, the Elko County Landfill and the Ormsby Landfill located in Carson City. The current application filing fee for a Class I source is \$30,000. The owners and operators of the Ormsby Landfill, the City of Carson have asked the Division to reevaluate the costs of the application filing fee. The City is concerned that the amount of time necessary to process a Class I permit for their landfill is substantially lower than that of the sources historically reviewed by the agency. Again, these are larger Class I facilities. The City also believes that the complexity of the application and associated regulatory requirements is less than those of the other sources typically evaluated in the Class I process.

As I stated earlier, EPA continues to consider other smaller sources of air pollution to be sources that need to be permitted under the Title V provisions. Many smaller sources of hazardous air pollutants and sources that have federal emissions performance standards are becoming subject to regulations that require these sources to submit applications for Class I permits. The current Class I fee structure was not specifically designed to address these smaller facilities.

For these reasons, the Division has committed to reevaluate the appropriateness of the Class I application fee. Additionally, the Division has also committed to reevaluate the annual Class I permit maintenance fee which is currently \$12,500. So a source would pay a \$30,000 Class I application fee and an annual maintenance fee for the permit of \$12,500.

The Bureau of Air Pollution Control is currently reviewing the time and resources needed to process applications for solid waste landfills and other small sources that are being effected by the newer EPA regulations. Today I wanted to let you know the concerns raised by Carson City and our commitment to evaluate those concerns. I also wanted to let you know of the intentions for bringing to the Commission a revised application and annual fee proposal that is better suited to fit the smaller affected facilities. While our review of the application and annual fees continue we currently anticipate that the bureau would be ready to begin working with the regulated community sometime early next year regarding the changes of the proposed fees.

I also wanted to add, Carson City specifically requested that I read into the record today that we, during our discussions we had committed to the City because they have had to pay their application filing fee to get an application in place, we committed to working with them should there be a change in the fee schedule, a methodology for basically reimbursing or somehow compensating for the fee that they've paid to get an application in place today. So, again, I wanted to clarify and make sure that I read that in on their behalf.

Commissioner Coyner asked how many Class I are there?

Mr. Elges answered I think we're running right around 20 Class I facilities. It changes pretty much on a daily basis, but roughly 20.

Commissioner Coyner asked are we aware that the Air program is going to have significant financial issues in the next little while here?

Mr. Elges answered absolutely.

Commissioner Coyner stated so before you commit to making any lower fees available, you'd better weigh that into the equation and it may be that when you redistribute the costs among all the classes that even if

they're in some new special class, but something less than Class I, they may still end up with a fee in this neighborhood just because of the way that the fee structure is going to have to be redone.

Mr. Elges stated absolutely Mr. Coyner. That's obviously something that we've been looking at very closely, recognizing the changes that are on the horizon. The other thing that I think is important to keep in mind here is the number of sources, and I don't have a number for you today, but that may come into the program because of these new regulations. So there will be some offset because of more sources and more permitting and really that's the strategy right now of the difficulty in trying to forecast the future while dealing with what regulations are in place today.

Commissioner Coyner stated it's a point of information, no action required.

Daren Winkelman introduced himself as representing the Carson City Environmental Health Department. He stated we also are the regulatory arm and we also handle all the permits for the landfill. I would just like to say we appreciate Allen and Mike and their staff in helping us out in this process. When we originally heard of the \$30,000 permit fee that we had and the \$12,500 after that, we were a little perplexed about that and about how our operation works. So it was nice to hear that Allen was willing to at least take a look at it. I mean that's all we've asked at this point is to take a look at that. We feel our operation doesn't fit into those categories. It certainly doesn't fit into a category of \$30,000 a year permit. I think, as Mike said, I'm kind of new to the game on the whole regulations, but landfills weren't considered when you guys originally set those fees. So, we're anxious to work with Allen and see what we can come up with. So I appreciate the Commission hearing this issue and at least taking a look at it. So thank you.

Chairman Close called for further questions. There were none.

Chairman Close moved to **Agenda Item X. Discussion on the California Heavy Duty Vehicle Emission and Engine Program.**

Adele Malone introduced herself as working for the Bureau of Air Quality Planning. She stated this is an information item in response to a discussion at the last Commission meeting in March where there was concern about heavy-duty diesel emissions and contaminant health hazards and visibility impairment and so forth. Following that Commission meeting Lloyd Nelson with the Department of Motor Vehicles and I raised the issues that we heard here with the I & M Committee, the advisory committee on control of emissions from motor vehicles. At their April meeting, Lloyd chairs that committee, he suggested that a subcommittee be created to deal with the heavy-duty diesel emission control strategy questions. That subcommittee has representatives from Environmental Protection, DMV, Washoe and Clark Counties, Department of Agriculture, Nevada Motor Transport Association and the SEC. They have met twice: early July and late August. That subcommittee assisted in drafting the amendments to the heavy-duty opacity testing program that were adopted. Those amendments were adopted this morning. They are also looking into the possibility of bringing light-weight heavy-duty diesels into an annual smog check program that is 8,500 to 14,000 pound gross vehicle weight. Basically, ¾ and 1 ton pickup-type of vehicles. That's preliminary stages and requires a statute change. They have also surveyed State and EPA programs on the control of heavy-duty diesel emissions and, Sheri do you know if the Commissioner's have that handout that I gave to David yesterday? It's a single-page handout that says, "Heavy-Duty Diesel Emission Control Strategies?"

Commissioner Coyner stated it's Exhibit No. 6.

Ms. Malone stated basically the top of it describes what the existing controls are for heavy-duty diesel vehicles, a bill draft that is in the works and then the control strategy option survey. We've not only looked at inspection-type of programs but engine controls, idling restrictions, fuel controls, public outreach and incentive programs and the committee has sort of zeroed in on looking additionally or more closely at the fuel controls and incentive programs. The committee has decided that it would like to continue meeting on a

routine basis at least quarterly and that will provide a useful forum for an information exchange among the different groups represented. It will give them an opportunity to discuss and potentially develop more heavy-duty diesel emission control strategies that might be appropriate in Nevada. They are currently working on getting an accurate count of heavy-duty diesels in Nevada by weight category. They're working on developing emission inventories for heavy-duty diesels in Nevada and working on or tracking methods for quantifying benefits that's, very poor methods or basically no methods for quantifying benefits and they're going to follow that rather closely.

Commissioner Crawford stated I guess I'm a little concerned about the GVW ratings that we're looking at because diesels were in big trucks and nobody else owned one unless you were hauling water to livestock or racing stuff up and down the road. These things have gotten so popular now and all the personal ones are at this GVW 8,500. So you're sitting right on the border of that whether they're 8,200, 8,400 or 8,500, 9,000. Maybe we ought to get off the border a little bit. Either make that lower or higher in line with, and I'm not trying to exempt personal use vehicles, but I think you're going to have a lot of implementation headaches if we're hanging on this 8,500 GVW because it's right there. So when you go in to register your vehicle or whatever as we move on through these programs you're going to be encouraged to say, "Oh, no, actually mine is 8,400."

Ms. Malone stated well, actually they would get into trouble if they do that because then they would be subject to an annual smog check program because we have a regulation for light-duty diesels which is under 8,500 lbs. They're required to come in annually before they can register and pass a smog check program.

Commissioner Crawford stated I guess that's part of the point, is the implementation of it, the information to people, the availability of services and just education of people. I'll just give you a short example of me, personally. I've got one of these. It's 8,800 and when I first registered it whoever did it keyed in "G" instead of "D." So for three years I got a smog notice for a truck that wasn't required to go get a smog. But I had a heck of a time with DMV getting out of that. It took me three years to get out of that, but what I found was I started going around and saying, "Okay, where do I go get this thing checked here in Reno?" I mean I ran around town for three hours before somebody who did them finally could explain to me how I could go get this fixed because I shouldn't be in there. That's the kind of thing I want to avoid for people. Not get them out of it, but I mean we need to address this. I think we're just kind of hanging right on the border there for educating all of these people that are buying their first diesel ever and don't have a clue not only not how to drive them, but what they ought to do.

Ms. Malone stated yes, some sort of public outreach or information availability.

Commissioner Crawford stated because if you buy, just the difference between one brand and the other, the Ford Excursion versus somebody else's diesel and if we're on this gross vehicle weight that's right there I think it's going to be confusing and difficult to implement.

Commissioner Johnson stated I think the attempt is to raise from 8,500 to the 14,000 so that there wouldn't be this problem. You'll still have to figure out where to go get smogged or opacity checked because you really don't get the full treatment on a diesel yet.

Commissioner Crawford stated ultimately we may want to be going lower than that so we can include everybody. That doesn't matter to me, the implementation of it is the question.

Commissioner Johnson stated all vehicles below that 8,500 get to report to the unknown smog station.

Commissioner Coyner asked are we truly enforcing the restriction of idling of diesel trucks and buses to 15 minutes?

Ms. Malone stated that is only enforced if there's a complaint. If there is a complaint then we investigate.

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

Allen Biaggi introduced himself as administrator of NDEP. He stated on behalf of the Division of Environmental Protection and the staff, we also would like to welcome Mr. Reavis to the Environmental Commission. Dick was deputy administrator for the agency for many, many years and a good friend and a good colleague and it's going to be great to work with him again. I also wanted to point out that Paul Iverson is ill with leukemia and is in the hospital in isolation right now undergoing treatment. On behalf of the Division and the staff we want to wish him well and I'm all sure all of you do as well and hope that he has a very speedy and complete recovery.

The Division of Environmental Protection last week submitted its budget to the administration. We are essentially at a hold-the-line budget once again this year as are most state agencies. The Division is primarily a fee and federal grant funded agency. So the 3 percent budget cuts that the Governor has recommended for general fund has not been a significant impact to us. Less than 1 percent of our budget is general fund, so we were very easily able to make those 3 percent budget cuts, in fact we did a 5 percent cut this year and 3 percent cuts for fiscal year '04 and fiscal year '05. So I don't anticipate that 3 percent reduction is going to impact us to any significant degree.

The legislature will begin February 6th and I wanted to let you know about some of the bills that we are proposing. We've actually proposed some bills of our own this session which we haven't done in the last biennium. We have two solid waste bills that are being requested. One would modify the way fees are assessed in our solid waste programs are funded. It would remove the tire fee. Every time you purchase a tire in Nevada you throw a dollar our way to help with recycling and solid waste in Nevada. That money helps support our agency and those efforts in Clark and Washoe counties as well as special grants to all counties within the State. We are proposing to switch that tire fee to a better nexus to solid waste management and that would be a per ton fee on waste generated internal and external to the State. It would generate about the same amount of revenue, but I think has a better tie to actual solid waste management within the State of Nevada and this is something that I typically get at the legislature during budget hearings every year as well. So I think it would satisfy some of those concerns.

Commissioner Johnson asked have you had input from the public on a successor to Silver State, whoever they are now?

Mr. Biaggi answered Dave Emme and I have met with Republic Silver State as well as the waste franchise here in Reno and they are not really thrilled with the idea. So we'll have to see how this all plays out.

The other solid waste bill would encourage recycling at multi-family dwellings and this is primarily to get at issues related to the very poor recycling rates in Clark County and it also would encourage the establishment of recycling coordinators within counties to encourage recycling within their jurisdictions and it proposes a funding mechanism to pay for at least one-half of that recycling coordinator within those counties.

We're proposing additional bonding capacity in what we call the AB 198 program which provides grants to municipal water systems for drinking water. This has been a very successful program and it's a very popular program and with the anticipated lowering of the arsenic standard there is going to be some significant needs in these small communities for water treatment and so we're asking for about a \$20 million to \$25 million increase in the bonding capacity in 198.

We're asking for a BDR to establish a Brownfields program within the State of Nevada. This would be a revolving loan program to provide low interest loans to communities throughout the State to clean up and encourage the cleanup of impacted industrial lands in urban and in rural areas. So it would be another low interest loan program run very similar to our wastewater SRF to provide grant funding and then the interest

that comes back to the agency from those grants can be further leveraged to provide additional loans. So it's a program we're fairly excited about and think will provide some very good results.

Commissioner Johnson stated IFC on Monday had Brownfield fund transfers. What were those funds?

Mr. Biaggi explained right in line with this program, it's the initial steps to accept the \$2 million award for capitalization that we have received from the Environmental Protection Agency and to move forward with some of our first activities. Some of the projects we're looking at right now include the (inaudible) Fire Academy here in Washoe County. We're looking at providing some assistance to Hawthorne for issues related to their landfill and land use issues, maybe putting a golf course on it. Mineral County, we're looking at some redevelopment issues and we also have a Tribe that is interested in securing some of this money. So, I anticipate there will be no shortage of projects for the money once it becomes available.

The last bill we have is a suggested split between the State Health Division and the Division of Environmental Protection for safe drinking water programs. Right now we have approximately 40 percent of the safe drinking water programs in the State. Health has the remaining 60 percent. We believe that it would make a lot of sense to make take these programs and put them under one umbrella, under one agency or the other. So this bill would make that split and bring many of those safe drinking water programs from the State Health Division to the Division of Environmental Protection. We're still working through some of the budgetary aspects of that. So, that's our legislative agenda for 2003. We anticipate there will be lots of bills we're going to be watching, but these are the ones that we hope will move forward from the executive agency.

I want to bring up a budgetary concern that we have that could be coming forward in 2005. Many of you were down at the hearing last year at Laughlin for the Mojave generating station and as you know Mojave is under a Consent Order from the courts as a result of legal challenges filed by the Sierra Club and Grand Canyon Trust, I believe, to put controls on the Mojave generating station by the end of calendar year 2005. In talking with people from Southern California Edison last week, they do not have their coal contracts in place from the Indian tribes in Arizona nor do they have their water rights situation resolved from the State of Arizona. As a result, we may be seeing that plant shut down for a six month to one year period beginning in 2006. If that occurs for a one year period, that would mean our fee revenues would be reduced by approximately \$360,000, which would dramatically impact our air quality programs. So we're working through our budget for 2005-2006 to try and make that up through other revenue sources. We met with DMV last week to look at the I & M program and that fund. Hopefully we will resolve that ultimately before those hits actually come about.

We're still working with the State Health Division on the Fallon cancer cluster. It's been highly publicized recently that some of the urine samples that were taken by the Centers for Disease Control last year have shown high levels of arsenic and tungsten. It's not clear what all that means, but the CDC, ATSDR, the State Health Division and our office are working to take additional samples, identify additional work that needs to be done not only to follow up on these two issues but also more global environmental issues to try and find that cause and effect relationship between the cancer cluster and the potential environmental causal link.

Finally, we're participating, along with Mr. Coyner and many other people, on mining bonding issues. There is not a lot of availability of financial instruments to assist the mining industry in meeting their obligations for reclamation bonding and it's actually becoming to a crisis level much as the malpractice for doctors, their insurance problems, construction defects and those types of things. We, through the Division of Environmental Protection and the University of Nevada, have created a bonding forum to try and brainstorm some creative mechanisms to come up with alternatives for mining bonding and the sureties that have traditionally provided this sort of financial instrument. I think that effort is going fairly well and they're working with both national and international efforts and other organizations who are doing like-minded work in identifying ways around the mining bonding issue. So it's something that I anticipate will be a high priority for us and continue for the next year or so probably.

Commissioner Reavis asked how's the federal grant funding looking for October? Is it staying level, going up, going down?

Mr. Biaggi answered our federal grant levels look very good. We are across the board in our programs. We're seeing at least status quo if not some slight increases in some programs. Jolaine recently worked very hard in securing the Division a \$500,000 grant to increase our computer systems and our availability for data outreach to other regulatory agencies and the public. Some of our monies in the water programs are actually going up. Tom Porta is actually having a hard time spending some of the money he's getting, which is a good position to be in and we're trying to get money out to the communities and the watersheds that are needed. But overall I think we're doing okay in the grant situation.

Commissioner Villaflor asked on this proposal that you have for the legislature about removing the \$1 per tire fee, how did you come about it? Have there been a lot of complaints about the \$1 fee?

Mr. Biaggi answered there have been some complaint about it. The complaint has been that there's not a direct nexus or tie between a \$1 fee on tires and solid waste management. So that's one of the reasons that we've decided to move forward on it. Quite frankly the other reason is that we're seeing more waste being imported into the State of Nevada from out-of-state sources. The Lockwood Landfill here in Washoe County receives a substantial amount of waste from California on the eastern and western side of the Sierra as well as the Sacramento valley. The interstate transport or interstate commerce laws don't allow us to charge a fee on that waste coming into the State of Nevada because it's considered a commodity. So by establishing a fee across the board on all waste whether it's generated in-state or out-of-state we can generate revenues and make that nexus tie better to solid waste management for the State.

Commissioner Villaflor asked why not keep both source of revenue?

Mr. Biaggi answered well the Governor is very concerned about taxation issues and so we are trying to be revenue neutral with regard to this and putting on the 30 cent fee on per ton of solid waste and taking off the tire fee generates about the same amount of money so it's a revenue-neutral proposal. But, again, as Joe had indicated, I think there's going to be substantial concerns from the large waste franchisees within the State and once you get a per-ton fee in the door, then it's much easier to start ratcheting that up and charging more money and I think that their position will be that they would rather not have that fee put in place in the first place so that's where I think the fight will be.

Commissioner Johnson stated I have this one to ask you and I know that it's not your concern, it's DMV, but the issue nevertheless brings up that very issue of the divided authority on DMV plus the air quality and I think we have a friendly audience, but . . .

Mr. Biaggi stated yes we do.

Commissioner Johnson stated it's always been problematic to me and this particular one is a problem.

Jolaine Johnson stated let me address that a little bit. The issue that Joe is referring to is a case where a DMV employee took a car in to ensure that things were being properly handled and the garage service worker said, "There's no way this car is going to pass a smog test. I recommend you go get it fixed and then come back." And the vehicle was probably smoking and obviously very, very awful. It's a requirement in this State that you run the smog test if the motorist comes in the door and the DMV has fined that garage service worker for not following those rules. On the surface this doesn't make any sense, it's ridiculous, but I have to tell you we've talked to the legislature about this very issue. The federal EPA requires that this program be run this way and requires that the DMV insure that this is occurring. So, as all good State employees do, I'm going to point this one at EPA. And the reason that it is done actually there is a fairly good reason for it, the effectiveness of the program is measured by how many cars are caught by having to

go for this test and this is one that would not have been measured as a car that we approved because there is a smog test program. So on the surface it seems ridiculous, but there is a reason behind it and it is federal law. The State has to implement this thing. DMV is required to do that.

Chairman Close called for further comments. Since there were none, he adjourned the hearing at 4:25 p.m.

## INDEX

<p>A &amp; K Earth Movers..... 39</p> <p>Advanced Crushing..... 36</p> <p>Agenda ...1, 2, 4, 14, 22, 25, 32, 35, 36, 37, 38, 39, 40, 41, 43, 60, 62, 64</p> <p>Agriculture ..... 10, 62</p> <p>All Lite Asphalt..... 39, 40</p> <p>Awards ..... 2</p> <p>Best Energy ..... 43, 44, 45, 47, 48, 49, 54, 57</p> <p>Biaggi ..... 34, 35, 59, 64, 65, 66</p> <p>Capurro ..... 9, 11, 12, 13</p> <p>Certification ..... 15, 19</p> <p>Clark County ..... 8, 15, 16, 64</p> <p>Close 1, 2, 3, 4, 5, 7, 10, 11, 13, 14, 19, 20, 22, 24, 25, 26, 27, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 52, 53, 54, 55, 56, 57, 60, 62, 64, 67</p> <p>Commission .... 1, 9, 13, 14, 20, 25, 31, 37, 39, 40, 41, 42, 43, 47, 48, 49, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64</p> <p>Compliance ..... 5, 10</p> <p>Cowperthwaite ..... 1, 36, 57, 58, 59, 60</p> <p>Coyner....1, 2, 9, 10, 11, 12, 13, 20, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 37, 38, 41, 42, 45, 46, 49, 50, 54, 56, 59, 61, 62, 64, 65</p> <p>Crawforth .....1, 7, 8, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 47, 48, 50, 51, 55, 56, 63</p> <p>Dahl....1, 2, 8, 9, 10, 13, 17, 18, 19, 21, 22, 28, 30, 32, 33, 34, 35, 47, 48, 50, 51, 52, 54, 55, 56</p> <p>Diesel ..... 62</p> <p>Division....1, 3, 4, 5, 10, 16, 18, 23, 24, 25, 29, 53, 54, 61, 64, 65, 66</p> <p>DMV ..... 4, 5, 6, 7, 9, 10, 11, 62, 63, 65, 66</p> <p>Doppe..... 1</p> <p>Drozdoft..... 14, 17, 18, 19, 20, 21</p> <p>Eagle Picher ..... 35</p> <p>Elges..... 22, 33, 34, 38, 42, 60, 61, 62</p> <p>Emme..... 30, 31, 52, 53, 54, 55, 64</p> <p>EPA.....4, 10, 11, 23, 25, 42, 47, 60, 61, 62, 67</p> <p>Exhibit..... 31, 57, 62</p> <p>Fallon ..... 43, 47, 51, 53, 65</p> <p>Fees ..... 14, 22, 60</p> <p>Gould ..... 25, 26, 27, 28, 29, 30</p> <p>Humboldt Ready Mix ..... 39</p> <p>I &amp; M ..... 10, 62, 65</p> <p>Iverson ..... 1, 64</p> <p>Johnson ..1, 2, 5, 6, 7, 9, 10, 13, 14, 19, 22, 23, 24, 25, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 49, 52, 53, 56, 57, 58, 59, 60, 63, 64, 65, 66</p>	<p>Lander County ..... 32, 34, 36</p> <p>Las Vegas Paving..... 38</p> <p>LCB..... 4, 14, 18, 22, 23, 25, 28</p> <p>Malone ... 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 62, 63, 64</p> <p>Modern Concrete..... 32</p> <p>NAC 444.570 ..... 25</p> <p>NAC 444.607..... 25</p> <p>NAC 444.842..... 22</p> <p>NAC 444.8427..... 22</p> <p>NAC 444.8455..... 22, 23</p> <p>NAC 444.8632..... 22, 25</p> <p>NAC 444.86325..... 22</p> <p>NAC 445A.286..... 14</p> <p>NAC 445A.287..... 14</p> <p>NAC 445A.289..... 14</p> <p>NAC 445A.291..... 14</p> <p>NAC 445B.001 ..... 22</p> <p>NAC 445B.221 ..... 22</p> <p>NAC 445B.291 ..... 22</p> <p>NAC 445B.327 ..... 22</p> <p>NAC 445B.737 ..... 4</p> <p>NAC 445B.739 ..... 4</p> <p>NAC 445B.7655 ..... 4</p> <p>NDEP ..... 15, 23, 64</p> <p>Oglebay Norton ..... 37</p> <p>Permit ..... 22</p> <p>Petition 2002-07 ..... 14</p> <p>Petition 2002-08 ..... 4</p> <p>Petition 2002-09 ..... 22</p> <p>Petition 2002-11 ..... 22, 25</p> <p>Petition 2002-12 ..... 25, 31</p> <p>Polyone..... 37</p> <p>Porta ..... 2, 3, 66</p> <p>Reavis.... 1, 5, 6, 14, 18, 22, 29, 31, 32, 33, 34, 35, 36, 37, 39, 41, 43, 45, 46, 48, 51, 56, 64, 66</p> <p>Ricci ..... 1, 2</p> <p>Robinson..... 1</p> <p>Rules of Practice..... 57, 59</p> <p>Tahoe Reno Industrial..... 41</p> <p>Trent ..... 23, 24, 25</p> <p>Vanderbilt Minerals ..... 43</p> <p>Variance ..... 43</p> <p>Villaflor ... 1, 20, 21, 29, 30, 31, 32, 35, 40, 55, 56, 59, 66</p> <p>Yamada ... 2, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43</p>
---	--