

STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of March 08, 2006

Washoe County Commission, Chambers
Reno, Nevada

Members Present:

Alan Coyner, Vice Chairman
Terry Crawforth
Lewis Dodgion
Pete Anderson
M. Francis Sponer
Don Henderson
Ira Rackley
Hugh Ricci

Members Absent

Melvin Close, Chairman
Harry Shull
Stephanne Zimmerman

Staff Present:

David Newton, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Readers Note: *These are summary minutes of the above referenced meeting of the State Environmental Commission (SEC). Please contact the SEC Recording Secretary for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).*

Vice Chairman Alan Coyner called the meeting to order at 10:00 a.m. Mr. Coyner requested from the Commission concurrence on an agenda item. Chairman Coyner asked the Commission not to take up the mercury regulation prior to 1:00 pm. The Commission acknowledged the request and Chairman Coyner informed all present that he would not entertain the mercury petition until after lunch (i.e., after 1:00 pm). He also noted that he would dispense with as many agenda items as possible before lunch, with the exception of the mercury regulations. The Commission agreed.

I. Approval of Minutes from the October 04, 2005 SEC Meeting

Chairman Coyner moved to the Agenda Item, and called for approval of the Minutes of the October 04, 2005 meeting. Commissioner Terry Crawforth responded by suggesting that future minutes contain the details of motions made at the meeting. He noted the October minutes were somewhat deficient in this area and recommended that be addressed in the future. The Commission agreed.

SEC Motion -- Commissioner Crawforth made a motion to accept the minutes with the stipulation that minutes of all future meetings contain details of all motions. Chairman Coyner called for a second on the motion; Commissioner Ira Rackley provided the second and the motion carried with a unanimous vote.

II. Settlement Agreements on Air Quality Violations

Vice Chairman Coyner proceeded to Agenda Item II, Air Quality Violations. He asked the Commission to consider the violations as a group, i.e. by consent calendar. He then asked if there were any members of the public that wished to address the NOAVs. There were none so

he asked the Nevada Division of Environmental Protection (NDEP) to provide a brief summary of the fifteen (15) settlement agreements under consideration.

Mr. Leo Drozdoff, Administrator of NDEP, approached the podium. Mr. Drozdoff informed the Commission that this would be Mike Yamada's last appearance before the Commission; He noted that Mr. Yamada would be retiring from NDEP. He further noted that Mr. Yamada had served NDEP and the Commission admirably over the past several years.

Mike Yamada, Enforcement Supervisor for NDEP's Bureau of Air Pollution Control (BAPC) approached the podium. Mr. Yamada provided the Commission with a short synopsis of each of the 15 settlement agreements for air pollution control violations listed below:

- 1) American Cement and Aggregate –Violations #1965 & 1966
- 2) Awesome Construction, LLC –Violation # 1969
- 3) Bolling Construction, Inc –Violations # 1965A & 1966A
- 4) Builders Choice, Inc. –Violation # 1996
- 5) Eagle Ridge at Genoa, LLC –Violation # 1997
- 6) FNF Construction, Inc. –Violations # 1967, 1968, 1971, 1972 -1974
- 7) Frehner Construction Inc. – Violation # 1987 - 1989
- 8) Glamis Marigold Mining Co. –Violations # 1999 & 2000
- 9) Hunewill Construction Co. –Violation # 1984
- 10) James Hardie Building Products –Violations # 2004 -2007
- 11) Mercer, Fraser, Inc –Violations # 2008 & 2009
- 12) North Tahoe Investment Group –Violation # 1983
- 13) River Park Properties, LLC –Violation # 1985
- 14) Vega Construction & Trucking –Violation # 1977
- 15) Wendover Casinos, Rainbow Hotel Casino –Violation # 1964

Commissioners Hugh Ricci and Terry Crawford asked Mr. Yamada a series of questions about how the fines are assessed. Mr. Yamada responded by describing how the enforcement conferences work including when a Supplemental Environmental Project (SEP) is considered in lieu of issuing an air quality violation to a company. Commissioner Frances Sponer joined the questioning by asking Mr. Yamada about a reference in the minutes from the last SEC meeting regarding NDEP's penalty matrix. She asked how the matrix is used to determine fine amounts. Mr. Yamada noted that the same matrix is being used currently but needs improvement. He said that NDEP would bring the matrix back to the Commission for review. Commissioner Sponer then asked Mr. Yamada for a copy of the matrix and he said he would send it to her.

Chairman Coyner noted the fines for the 15 violations totaled just over \$274,000. He asked Mr. Yamada why the number of fines and amounts were so high; Mr. Yamada suggested that new companies coming from other states are not fully aware of Nevada's air quality regulations. Mr. Coyner noted to everyone that the violations (NOVA's) serve as a deterrent, although Nevada would rather work with industry than fine them. Mr. Yamada responded by saying that is exactly what NDEP does.

SEC Motion: Chairman Coyner asked for any public comment on the violations listed on the agenda, being none; he called for a "consent vote" on all 15 violations from the Commission. Commissioner Dodgion so moved; Commissioner Crawford seconded, and there being no further discussion, the Commission unanimously approved the motion.

Chairman Coyner asked the Executive Secretary to prepare a letter from the Commission to Mr. Yamada describing the Commission's appreciation for the five years of service provided by Mr. Yamada. The Executive Secretary said he would do so. Mr. Yamada ended by thanking the Commission for their cooperation and dedication.

Note: Appendix I contains the settlement agreements index. The index provides the company name and a brief description of the violations, the NOAV number(s) and the proposed settlement (fine) amounts.

III. Appointment of Advisory Board to the State Environmental Commission (SEC) on Certification of Operators of Public Water Systems

Vice Chairman Coyner proceeded to Agenda Item III concerning the Advisory Board to the SEC on the Certification of Operators of Public Water System. Mr. Doug Zimmerman, Bureau of Safe Drinking Water, approached the podium and provided the commission with the following background.

Mr. Zimmerman noted that Agenda Item III is the Division's recommendation for appointment (or reappointment) of an Advisory Board on Certification of Operators of Public Water Systems. He noted that Darrin Price, Chairman of the current Board, was available to answer any questions the Commission might have.

Prepared Comments from Mr. Zimmerman: As a result of SB 395 passed in the last legislative session, drinking water programs were transferred from the Nevada Division of Health to the NDEP. The transfer occurred on July 1, 2005 or about 8 months ago. The transfer included the program for certification of operators of public water systems -- and as the Commission knows, at its last meeting you approved a significantly revised set of regulations covering certification. The Advisory Board took a leadership role with respect to development of the regulations and were essential to their successful completion.

The statute addressing the appointment of an Advisory Board is NRS 445A.870 and this was part of the statutory authority transferred by SB 395. The statute states that the Commission may appoint an advisory board to act in an advisory capacity in matters relating to the certification of operators.

The statute goes on to say that if a Board is appointed at least one member must be a member of the American Water Works Association and at least one member must be a member of the Nevada Rural Water Association. The current Board consists of 7 members (the bios of the members are in your packet) and they more than satisfy these requirements. The members serve without compensation; however they can receive per diem for travel expenses. The State Board of Health first appointed the Advisory Board in 1992 and the Board has been in existence since that date.

As I stated earlier the Division supports the appointment of the Advisory Board and there are two primary reasons why we make this recommendation. First, the Board provides a forum for communication between the regulated community and NDEP. There are approximately 1200 certified operators in the State and the Board meetings provide a mechanism and opportunity for communication. For example, at the last meeting of the Advisory Board in January of this year,

NDEP placed on the agenda a discussion item regarding contract operators and their responsibilities to the systems they are working for. Without going into detail, the Division wanted to assure that these contract operators (individuals who typically provide services to small systems who don't have their own operators) were fulfilling their responsibilities as the person in responsible charge of the system. After hearing our concerns, the action the Board decided to take was to redistribute an ethics policy that was developed a number of years ago and to raise this issue at the annual Nevada Rural Water Conference which is scheduled for next week. So again the Board provides a mechanism by which we can communicate with the regulated community.

The second reason we recommend appointment of the Board is to get their assistance with an ongoing effort the Division has undertaken to evaluate and compare the certification programs for waste water treatment plant operators and drinking water operators. On the water pollution control side of the Division we have a program for certification of operators of sewage treatment plants and a Board similar to this Advisory Board exists for that program. Now that both programs are under the Division we believe it makes sense for us to look at the programs and identify opportunities for improvements and perhaps consolidation of the programs. Input from both Boards on this effort would be very valuable.

Thus, the Division is recommending the SEC approve the continuance of the Advisory Board for a period of two years. Again, this time period would allow the Division to consider alternatives such as consolidation of the two boards, needed statutory or regulatory changes etc.

I would be happy to answer any questions from the Commission and as I noted earlier Darrin Price, Chairman of the Advisory Board is here and is also available for questions. **(End of prepared comments)**

Chairman Coyner asked Mr. Zimmerman if NDEP usually attended meetings of the Advisory Board and how vacancies are filled on the Board. Mr. Zimmerman noted that NDEP attends all board meetings. Regarding vacancies, Mr. Zimmerman stated that the Advisory Board makes recommendations which then must be approved by the SEC.

Chairman Coyner then asked Mr. Darrin Price to address the Commission. Mr. Price gave the Commission some additional background and history of the Board and he noted that NDEP staff has been helpful during the period of transitions between the State Board of Health and the SEC.

Commissioner Spomer asked Mr. Price how the Advisory Board would be reporting to the SEC. Mr. Price said that NDEP staff could report, or a member of the Board could report in writing or at the SEC meetings, as might be appropriate. Commissioner Spomer then asked the Chairman Coyner how he envisioned the Advisory Board might report to the SEC. Chairman Coyner said the Division should decide and that no fixed reporting should be considered at this time.

Mr. Coyner then asked for any public comment on the agenda item; there being none he suggested to the Commission that staff had prepared a draft motion and he asked if anyone would like to introduce it.

SEC Motion – Commissioner Crawford proposed the suggested motion. The motion reads “Appoint an Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems. The Advisory Board will consist of the members listed below who are

appointed for a two-year term.” Commissioner Sponer seconded the motion, Chairman Coyner called for the vote which was unanimous in favor.

Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems.

- Darrin Price (Chairman), Sun Valley G.I.D., 5000 Sun Valley Boulevard
- Lynn Forsberg – Elko County (Representing the General Public)
- Chet Auckly, S.E.E. Company LLC
- Cameron McKay (Secretary), Round Hill General Improvement District
- Marie Pollack (Vice Chair)
- Marcellus Jones, Las Vegas Valley Water District
- Harvey Johnson, Incline Village General Improvement District

IV Regulatory Petitions

Vice Chairman Coyner proceeded to Agenda Item III, “Regulatory Petitions.” He noted that three of the four petitions would be heard before lunch and that the last petition (Mercury Air Emission Permitting Program For Precious Metal Mining Facilities) would be considered in one continuous afternoon session.

Regulation R175-05: Adoption of federal regulations by reference governing hazardous Waste Management: Mr. Jim Trent, Supervisor, Program Development Branch, Bureau of Waste Management approached the podium. Below are Mr. Trent's prepared remarks which he presented to the SEC regarding this regulation.

Prepared Remarks by Jim Trent: With this petition, the Bureau of Waste Management is proposing to update our adoption by reference of federal hazardous waste regulations and make minor updates and corrections to existing state regulations. A workshop to solicit public comment on the proposed regulations was held on October 19, 2005, in Carson City. Five people attended the workshop. The proposed regulations and minutes from the workshop were posted on the NDEP website and were 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 update our reference to federal regulations in the NAC so as to remain authorized to enforce these federal regulations in lieu of U.S. EPA. Sections 1, 2, 3, 5, 9, 10, 11, 12, 13, 14, 17, 18 and 19 of this petition incorporate federal rules published from July 1, 2003 to July 1, 2005.

Let me briefly describe the five federal amendments proposed for adoption. They include the following: clarification of the recycled used oil management standards; revisions to the National Environmental Performance Track Program; new listing of hazardous non-wastewaters from the dye and pigment industries and revisions to related land disposal restrictions; standardization of the Uniform Hazardous Waste Manifest; and updates to the analytical and sampling methods that have been approved for use in complying with RCRA hazardous waste regulations.

Section 6 deletes from adoption provisions of the new federal regulations Nevada does not wish to incorporate as they would conflict with current state hazardous waste regulations. Section 7

provides exceptions to standard word substitutions to ensure that the NDEP and the federal EPA are properly referenced.

State initiated changes in Section 4, 8, 15 and 16 are address revisions to reflect our recent move to the Bryan State Office Building, 901 South Stewart Street, in Carson City. Sections 6 and 8 also contain revisions where references to obsolete federal regulations were updated. I will be glad to answer any questions. **(End of prepared remarks)**

Vice Chairman Coyner asked for questions from the Commission. Commissioner Ricci asked Mr. Trent if there was an administrative way to get these regulations adopted, i.e., as opposed to having the Commission take the action. Chairman Coyner responded that this was a likely question for Mr. David Newton, Deputy Attorney General for the SEC. Mr. Newton responded by saying the short answer was “No”. He went on to note that NRS 233B is quite clear on this point. He noted there is no real way to circumvent the regulatory adoption process. He did say if the agency desired (e.g., NDEP), it could combine the required public workshop and the public hearing at the same time -- and this was the only way to “streamline” the process.

Vice Chairman Coyner then asked Mr. Trent why some federal regulations were not adopted. Mr. Trent noted in certain cases federal regulations are not adopted because they would apply to an industry that doesn't exist in Nevada – such as auto manufacturing.

Vice Chairman Coyner then called for public comment; there being none, he closed the public comment period and asked for a motion from the Commission.

SEC Motion – Commissioner Crawford moved the adoption of Regulation R175-05: Adoption of Federal Regulations by Reference Governing Hazardous Waste Management. Commissioner Sponer seconded the motion, Vic Chairman Coyner called for the vote and the vote was unanimous in favor.

Vice Chairman Coyner proceeded to the next regulation on the agenda.

Regulation R176-05: Procedures for grants to enhance solid waste management systems and efficient use of resources. Mr. Eric Noack, Chief of the Bureau of Waste Management of the Nevada Division of Environmental Protection presented the regulation to the Commission. Below are his prepared remarks.

Prepared Remarks by Eric Nock: “The purpose of this petition is to establish procedures for the Division to award grants to municipalities, educational institutions and nonprofit organizations for projects that enhance solid waste management systems and promote the efficient use of resources.

Currently, the Division uses contracts to promote recycling and waste reduction programs in Nevada, but the State contract procedure is an inefficient means of soliciting proposals and awarding funds for such broad purposes as enhancement of solid waste systems and promotion of the efficient use of resources. For this reason legislative change was sought to establish Division authority to award grants.

In the 2005 legislative session, Senate Bill 396 amended NRS 444A.110 to authorize the NDEP to: ...Award grants to municipalities, educational institutions and nonprofit organizations for

projects that enhance solid waste management systems and promote the efficient use of resources. Senate Bill 396 further states that: The State Environmental Commission shall adopt regulations governing the administration of grants awarded...

This petition seeks to amend Chapter 444A of the Nevada Administrative Code by establishing procedures for the administration of solid waste and recycling grants. If adopted, the new regulation will streamline NDEP procedures for providing financial assistance for projects that improve recycling, waste reduction and solid waste management. The new regulation will broaden the projects eligible for NDEP assistance. They will no longer be limited to recycling and waste reduction projects.

Examples of projects that will become eligible are:

- Solid waste management planning
- Landfill equipment, and
- Illegal dumping prevention & cleanup

The new regulation will not increase the funding available for financial assistance, which is currently about \$150,000 per year. Project award amounts are anticipated to continue to be within the range of \$1,000 to \$15,000. The new regulation will also not allow grants to be awarded to for-profit businesses.

Public workshops were held in Las Vegas and Carson City on November 16 & 17, 2005 to provide information and receive public comment on the proposed regulations. A total of 24 people attended the two workshops. The draft regulation was also posted on the NDEP website prior to the workshops.

I will now briefly go through the regulation and describe the main provisions of each section.

The first few sections contain definitions.

Section 8 establishes procedures for the Division to solicit grant applications and defines eligible applicants. It also defines the required form and contents of the application.

Section 9 provides that the Division shall review the application to determine the following: the eligibility of the applicant, the eligibility of the project, the eligibility of the costs and the adequacy of the supporting information.

Section 10 describes what factors the Division shall consider in its evaluation of the application. This section also provides that the Division shall consult with a solid waste management authority before awarding a grant to an applicant in its jurisdiction.

Section 11 provides that the Division shall award grants for proposed projects that best meet the factors specified in Section 10. Section 11 also provides that multiple grants may be awarded to a single applicant.

Section 12 provides that the Division and the grant recipient shall enter into an agreement that establishes the length of the term of the grant, a schedule, terms for payment, and other grantee requirements.

Section 13 contains provisions for grant cancellation if it is not completed in accordance with the terms and conditions of the grant or is deemed to no longer be beneficial. It allows the Division to examine relevant records and may require reimbursement for ineligible expenditures. It also allows for the return of unexpended funds.

To sum up, this new regulation establishes procedures for the Division to award grants to municipalities, educational institutions and non-profit organizations for projects that enhance solid waste management systems and promote the efficient use of resources. I would now be glad to answer any questions concerning this petition. **(End of prepared remarks)**.

Vice-Chairman Coyner asked if the Commission had any questions. Commissioner Dodgion asked Mr. Noack about the \$150,000 in the entire fund. Mr. Noack said there was several hundred thousand in the fund. Mr. Dodgion asked for a further explanation of the fund. Mr. David Friedman, NDEP Recycling Coordinator came to the podium and provided the history and background about the fund. He said that about \$1.9 million is collected annually and that NDEP is allocated about 45% of that amount with the rest going to the health districts in Clark and Washoe Counties. Commissioner Anderson then asked if there was a match to the \$150,000 being allocated to the grant program and if the base amount of grant funds was sufficient to meet grant requests. Mr. Noack said there was no match required and the base amount seemed adequate. He noted that NDEP receives about \$250,000 worth of requests per year.

Commissioner Sponer then asked about how the grant allocation process works within urban counties including the health districts. She also asked several questions about the fund in general. NDEP staff responded to all of her questions. Commissioner Ricci asked about the RFP and grant approval process. Mr. Friedman explained how the State Purchasing process works; he explained how RFP's are rated according to set criteria in the RFPs and the committee review/approval process at the State Purchasing Division.

Vice Chairman Coyner then called for public comment; there being none, he closed the public comment period and asked for a motion from the Commission.

SEC Motion – Commissioner Sponer moved the adoption of Regulation R176-05 titled: Procedures for Grants to Enhance Solid Waste Management Systems and Efficient Use of Resources. Commission Crawford seconded the motion. Vice Chairman Coyner called for the vote, which was unanimous in favor.

Vice Chairman Coyner proceeded to the next regulations on the agenda:

Regulation R206-05: Adoption by Reference of Federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs): Ms. Adele Malone, Planner - Bureau of Air Quality Planning of the Nevada Division of Environmental Protection presented the regulation to the Commission. Below are her summary remarks.

Adele Malone Summary Remarks: This regulation (R206-05) provides a routine update, which was last done in November 2004. The regulation adopts certain federal rules, mostly NSPS and NESHAP (emission standards & other requirements specific to certain industries), so that EPA can delegate its implementation authority to Nevada. As EPA promulgates new NSPS or

NESHAPs or amends existing ones, the State also has to adopt the new rules and amendments in order to be able to implement them. This update will allow the regulated community to continue to work with the State as opposed to with the EPA. Some specific changes include:

- Updating Appendix W to Part 51 of the CFR, Guideline on Air Quality Models,(addresses the need for consistency in applying AQ models for SIP development) through it's revision on November 9, 2005;
- Regulation currently adopts the applicable NSPS and NESHAP rules as they existed on July 1, 2004 in the CFR and in the FR through September 13, 2004;
- This update adopts new rules and amendments published after September 13, 2004 through mid-November 2005 when this petition was drafted;
- In section 12 the Standard Industrial Classification Manual is available on the internet – address added;
- Section 13, cost of CFRs is updated;
- Bottom of page 2, subpart DDDDD is deleted by mistake and I would like to request that the Commission add “DDDDD” into the list found in (7)(a);

Regarding the public process, a first draft of the proposed regulation was posted on SEC website November 29, 2005. Public workshops in tandem with mercury regulation workshops were held on December 15 in Carson City and December 19 in Elko. No adverse comments were received on the regulations. **(End of summary remarks).**

Vice Chairman Coyner asked for questions from the Commission. Commissioner Dodgion asked Ms. Malone to explain what NESHAPs were. She asked Mike Elges, Bureau Chief for the Bureau of Air Pollution Control, to respond. Mr. Elges noted that the NESHAP's list contains 189 air pollutants that were established in the Clear Act by Congress, and that Congress established industrial standards for these pollutants. Commissioner Sponer then asked about the adoption process of federal regulations. Staff responded by explaining how federal regulations are posted in the federal register and how and why the State adopts those federal regulations into the NAC.

Vice Chairman Coyner then called for public comment; there being none, he closed the public comment period and asked for a motion from the Commission.

SEC Motion – Commissioner Ricci moved for adoption of Regulation R206-05: Adoption by Reference of Federal New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPs) with the amendment to subsection 7 of section 1 as proposed by Ms Malone. Commission Dodgion seconded the motion. Vic Chairman Coyner call for the vote, which was unanimous in favor.

Vic Chairman Coyner noted there was time available before the lunch break to address other items on the agenda, with the exception of the mercury regulations, which would be addressed after the lunch period. He then moved to Agenda Item VI.

VI Briefing to Commission – NDEP Administrator

Mr. Leo Drozdoff, Administrator of NDEP, approached the podium and provided the following briefing. He began with a discussion of a recent decision by the US EPA Board of Appeal on a permit the Division issued to Newmont for a power plant. The plant would supply power to company facilities. The appeal was filed by an environmental organization and NDEP defended the appeal before the EPA. Mr. Drozdoff offered the following account, paraphrased from a recent NDEP press release:

EPA's Environmental Appeals Board (EAB) in a written decision has upheld a permit issued by the Nevada Division of Environmental Protection. NDEP issued the permit to Newmont Nevada Energy Investment for the construction of the TS Power Plant near the town of Dunphy in Eureka County, Nevada. The permit was challenged by the Association for Clean Energy (ACE) and brought before the EAB. In an 82-page decision, the EAB upheld the State permit decision in its entirety and denied the petition for review on all counts. In a written summary of the decision provided by EPA, the Board found that ACE failed to show that the State had committed reversible error in any respect. The EAB's decision represents final agency action on the TS Power Plant permit.

Commission Ricci asked about the US EPA Board of Appeals. Mr. Drozdoff noted it was a US EPA Headquarters entity and that its actions were administratively final. Any appeal denied by the entity could then be taken to federal court.

Mr. Drozdoff then provided the Commission an update on another appeal that was recently denied by the Nevada State Supreme Court. This appeal concerned the Lone Tree mine, another facility owned by the Newmont Company. He noted that the SEC heard this appeal from Great Basin Mine Watch (GBMW) and the SEC upheld NDEP's water pollution control permit that was issued to the mine. GBMW then took the case to court and the permit decision was upheld on all counts in district court and the Nevada State Supreme Court.

Mr. Drozdoff moved on to the alternative fuels issues – he noted changes in state law will now require new regulations governing emission testing of alternative fuel vehicles. Testing is now required and many of the "alt fuel vehicles" are owned by government agencies. Because of different fuels and varying technologies, he noted the reg development process may be difficult and that numerous public workshops are planned to address public concerns.

Mr. Drozdoff next addressed the planning process for scheduling future SEC meetings. He noted that an assessment was made concerning what regulations would need to be considered by the Commission in this fiscal year, and there being none, he said early in the next fiscal year would be an appropriate time for the next meeting. He also noted there are certain constraints with the SEC operating budget and that not having another meeting this fiscal year would relieve those constraints. Mr. Walker (SEC Secretary) was asked if he had any comments; he responded by echoing Mr. Drozdoff's concerns, noting the time and expensed involved in putting together an SEC meeting.

Mr. Drozdoff said he had two other issues to discuss with the Commission. The first being a number of pending applications for permitting major power plants in Nevada. He said the permitting process is a significant undertaking and the process has ramifications on agency resources. In northern Washoe County and in White Pine County there are power plants being

considered. Commissioner Anderson asked about the timing of permitting a major power plant. Mr. Drozdoff said it's a year-plus process not counting public input.

Mr. Drozdoff also discussed the Mohave power plant in southern Nevada, noting that it is shut down, in accordance with a consent agreement reached in 2005. He said they are still paying fees; however, they are not in operation now and they are looking for a new water source for the plant. He also said that NDEP does anticipate that other air permitting fees may be increased to compensate for the loss in fees from the Mohave station.

Commission Ricci asked about the duration of the Mohave permit in terms of fees. He also asked if the existing permit were terminated and Mohave closed and then re-opened, would they need a new permit and would they be required to upgrade the facility to meet more stringent permitting requirements? Mr. Drozdoff said yes, that would be the case.

The last issues presented by Mr. Drozdoff concerned the arsenic issue that was discussed at the last SEC meeting. He said the Division is now reviewing waiver/exemption requests from small water systems throughout the state. He said that Nevada was ahead of other states in the process of addressing the arsenic issue in drinking water. He noted the Division would bring the issues to the Commission at the next meeting.

Vice Chairman Coyner remarked that Mr. Newton was asked at the last meeting if a panel of the SEC could hear waiver/exemption requests, or did the full SEC have to act on those requests? Vice Chairman Coyner then ended the meeting for the lunch hour.

Vice Chairman Coyner opened the meeting for the afternoon session and he proceeded to the next regulations on the agenda.

Regulation R189-05: Mercury air emission permitting program for precious metal mining facilities: Vice Chairman Coyner noted the meeting process would be to hear from the agency first, which would take about an hour. This would be followed by public comments from elected officials, non-government organizations, the public and the industry. He noted the lineups as requested would be:

NGO's

Glenn Miller, PhD

Elyssa Rosen, GBMW,

Justin Hayes, Idaho Conservation League, Boise

Tim Wagner – Utah Clean Energy Campaign, Salt Lake City

Lee Loudon – Crescent Valley, NV

Roger Featherstone – Earthworks, Tuscon, AZ

Industry

Russ Fields

John Mud

Jerry Hepworth

Rich Hadic

Mr. Leo Drozdoff opened the discussion with a prepared statement on the mercury regulation. His statement addressed the process NDEP used in getting a draft regulation before the

Commission. His statement acknowledged the many institutions and individuals had participated in the process. He then said that Colleen Cripps, Deputy Administrator, would provide the background information including information about the mercury voluntary program and then Mike Elges, Bureau Chief for Air Pollution Control would “walk” the Commission through the regulation.

Summary Comments, from Colleen Cripps: Mercury is:

- Naturally occurring
- Geologically concentrated
- Associated with volcanic activity, gold deposits and geothermal springs
- Cycles extensively in the environment
- Complex chemistry that is not well understood
- Transported globally, regionally and locally – transport is thought to be dependent on the form of the Hg being emitted, with RGM being deposited more locally than elemental Hg which is thought to enter the global Hg pool.

Anthropogenic sources: coal combustion, hospital and municipal waste incinerators, thermal treatment of ore in precious metal mining, geothermal heat recovery, and historical mining releases.

The Hg from natural and anthropogenic sources that enters our oceans, lakes, and rivers is converted to methyl mercury by aquatic organisms and bioaccumulates in fish and shellfish. According to the National Research Council’s Committee on the Toxicological Effects of Methylmercury, the primary route of human and wildlife exposure to Hg is primarily through the ingestion of these contaminated fish, particularly large predatory species. In humans, Hg is a known neurotoxin and developing fetuses and children are more sensitive to those effects than adults.

In 1997 EPA reported that 5,500 metric tons of atmospheric cyclical mercury is released world wide into the global reservoir annually from natural, oceanic and newly produced anthropogenic emission sources. In that same year, EPA reported that 159 metric tons were emitted from US industrial sources, such as coal-burning utilities, municipal and hospital waste incinerators, industrial boilers, chlor-alkali plants, cement manufacturers and mining. As of 2002, global emissions continue to increase, while US emissions have dropped to 111.4 metric tons, with the mining industry accounting for 6.5 of the 111.4 tons (these numbers are based on the 2002 NEI Table of emissions from US source categories). This compares to the baseline mercury emissions from the mining industry of about 10.5 tons. Current EPA estimates show the mining emissions at less than 2 tons.

According to Ellen Brown, of EPA’s Office of Air and Radiation, EPA modeling data suggests that about 21% of US emissions of new mercury are deposited in the lower 48 states. The rest is transported into the global mercury pool.

Prior to 1998, mercury released from gold mining had not been systematically measured, and estimates from this industry were not available.

In 1998, the TRI was changed to require reporting by the mining industry. Initial estimates showed significant air releases of mercury (about 7 tons) from 7 mining facilities in Nevada. This estimate was revised upward to about 10.5 tons after some initial source testing.

Voluntary Mercury Reduction Program

In recognition of the hazards posed by mercury and the fact that no federal requirements existed for controlling mercury from this industry, the Voluntary Mercury Reduction Program (VMRP) was initiated in 2000 after the 1998 TRI data was published. This program was developed by the US EPA, the Nevada Division of Environmental Protection and the four mining companies with the largest reported Hg releases and finalized in February of 2002.

*Why voluntary program rather than a MACT (**Maximum Achievable Control Technology**)?*

EPA determined there was no existing regulatory requirement for the mines to control mercury emissions. Although a MACT could have been established, we all knew that the process would be lengthy and reductions would not be seen for years. EPA has established a number of voluntary programs in the past and that model would result in much quicker reductions.

Why just a Nevada program?

Nevada program because gold mining is concentrated in NV. Based on TRI reports, these four companies represented greater than 95% of the mercury released to the atmosphere by the gold mining industry. Program participation was based on a number of factors, but primarily the program was focused on those facilities with the largest emissions and the greatest potential to emit Hg due to the Hg concentration in the ore.

Program Goals:

- Achieve significant, permanent and rapid reductions in mercury air emissions from gold mining operations;
- Achieve reductions at reasonable costs;
- Achieve reductions through approaches most suitable for each individual mining facility.

Two alternative tracks were identified: (1) the MACT Equivalent Track - where the facility agreed to implement and install or had already implemented and installed MACT equivalent controls. During the initial development and implementation of the voluntary program, EPA conducted an evaluation of the existing available controls and determined which ones they considered MACT equivalent. This is important, because it set the baseline for what we are calling presumptive MACT.

The second option was called the Process Modification Track – here the facility agreed to use existing controls (which may or may not be MACT equivalent) coupled with pollution prevention, waste minimization, or pollution abatement measures to achieve air emission reduction goals of at least 33% by the end of 2003 and 50% by the end of 2005. (Although there were facilities that initially took advantage of this second option, by the end of the initial 5 years of the voluntary program, all of the companies had installed some MACT equivalent controls)

A plan was to be developed that included a description of the controls that had been implemented or installed or, for the second track, the process modification, pollution prevention, waste minimization measures that had been implemented and the annual emissions estimates and annual reporting was required of the four participating companies. (The details of the reporting

requirements and a description of what were considered MACT equivalent controls are available in the VMRP Guidance Document dated February 12, 2002.) And finally, these companies were to assist EPA in effort to encourage additional participation.

To ensure the sustainability of the reductions, the VMRP members agreed to incorporate the control measures into their facility's operating permit upon renewal.

EPA considered this program an alternative to developing a MACT for the mining industry. The success of the program was to be reviewed at the end of 2005.

Results:

According to EPA, the voluntary program has reduced Hg emissions at these five facilities by over 80%.

Where do we go from here?

Program Enhancements -- NDEP began evaluating the VMRP program and considering enhancements in the fall of 2004 (a year before the scheduled program review).

- The issuance of a draft report that raised questions about the how the data are presented and the testing and recordkeeping requirements
- Concerns about how the requirements would be included in a permit revision
- Discussions of research needs, and
- Response to Notice of Intent to Sue by ICL

We had an initial meeting with the industry in November and then had two or three discussions with industry, and representatives from Nevada environmental groups and UNR. At those meetings we decided to move forward with a more formal process to identify needed program enhancements and discussed expanding the program to include additional facilities and whether or not the program should remain voluntary or if it should be regulated by the state. We heard concerns that not all of the mining facilities with the potential to emit Hg were in the program; that because there were no regulatory hammers, a facility could potentially decide to just opt out of the program; that there was no mechanism for ensuring that the Hg controls were the best available and that those controls were being operated effectively; and that the emissions were not being reported consistently.

We held a meeting of all the interested parties in early June and since then dozens of meeting various groups have been held and presentations made at a number of regional meetings. We issued an initial draft of the Nevada Mercury Control Program on November 18th. This is one of the documents in your packet.

The NMCP (Nevada Mercury Control Program) was designed to build on the successes of the VMRP, but the differences are significant. As currently proposed, the NMCP expands coverage to all precious metal mining operations. This will be done through a regulatory and permitting program that is designed to ensure that the best available controls are applied to all thermal sources that emit significant amounts of Hg (facilities will not be able to just opt out these regulations, making all aspects of this program enforceable). This new program provides a mechanism for ensuring the installation of state of the art controls. This will be done through a

case-by-case review of best available controls and requiring that those controls be installed (aka the Nevada MACT). We have developed specific monitoring, testing, recordkeeping and reporting, and operations and maintenance requirements to (1) ensure that the controls are working efficiently and effectively so that Hg is being controlled to the maximum extent possible and (2) to ensure that reporting is being done consistently.

After the draft program document was (posted) issued, we began working on the regulations in earnest. The regulations were drafted and workshops were held in December in Carson City and Elko. The formal public comment period opened on February 1st. We have received well over a hundred written comment letters and emails. Mike will discuss the types of comments we received, but first he will walk you through the regulations and timelines.

In conclusion -- given the large global mercury pool, the fact that mercury can be transported very long distances, the complexity of the chemistry involved, and the paucity of existing data, we feel that it would be irresponsible to make any specific claims about the fate and transport of the mercury released by Nevada's mines. Rather, we are committed to ensuring that the mercury reductions we have seen to date are sustained and that additional reductions are achieved while this research continues. **(End of summary comments form Colleen Cripps)**

Prepared Testimony, Mike Elges:

Good afternoon Mr. Chairman, members of the commission, for the record my name is Mike Elges. I'm the Chief of the Bureau of Air Pollution Control. As Colleen said, I'm here today to present an overview of the proposed air quality regulations contained in Petition 2006-07 for the Nevada Mercury Air Emissions Control Program. As Colleen mentioned, there are three major goals of this proposed Program; to enhance the VMRP program's monitoring, testing, recordkeeping and reporting requirements; to expand the program to all precious metal mining operations; and to implement improved and additional state of the art mercury emissions controls through a regulatory process.

PROGRAM OVERVIEW

The proposed Mercury Air Emissions Control Program requires the best available mercury emissions controls for precious metal mining facilities that process mercury-containing ore and that utilize thermal treatment processes. Program requirements are all provided through a permit process, and all applicable conditions are established in a permit known as the Mercury Operating Permit to Construct. The proposed mercury permit program is based on the very successful Operating Permit to Construct program which was adopted by the Commission in November of 2002.

Before going through the proposed regulations, I'd like to provide a brief overview of the Mercury Program and its requirements. This program requires thermal processes located at precious metal mining operations that emit mercury to apply the best mercury air emissions controls available. Like most new regulatory requirements that affect existing units, the program has been developed based on a phased approach to bring the existing units up to the new control requirement standards.

Phase 1 requires three things: One; that the mercury emissions control technology installed on the VMRP units is included in a mercury permit. This is done to ensure the continued operation of these controls. Two; it requires mercury emissions testing of existing thermal units to establish a better understanding of the type and amount of mercury emitted from the thermal units. And

three, this Phase requires sampling, operation and maintenance, monitoring, recordkeeping and reporting criteria for each thermal unit at a facility to be established in a permit. Incorporation into the permit ensures that the requirements are enforceable and that the existing controls are effectively reducing mercury emissions.

Phase 1 also provides an incentive program for installing additional controls on a thermal unit. Early Reduction Credit or ERC is an allowance that provides credit to a facility that installs additional controls early in the program. The credit is an extended period of time or grace period for having to install what is ultimately determined to be the best controls available known as NvMACT.

Phase 2 of the program focuses on establishing what will constitute the best available controls for each type of thermal unit. This is the NvMACT process. Along with determining the best controls, the determination establishes the associated emissions limitations or other requirements for those controls, and establishes the timelines for installation and operation of the controls.

I need to emphasize here that the two-phased approach applies to existing units only. For new units or units that are being modified, the NvMACT requirements apply immediately. That is, there is no transition or phase-in period for installing NvMACT level controls on new or modified units. I will clarify all of this as I go through the regulations and describe how the program works. I just wanted to make sure that it is clear that not all thermal units are afforded this phased approach.

Before getting into the regulations, I'd like to briefly discuss a mercury questionnaire that the Division has sent to all precious metal mining operations in Nevada. The purpose of the questionnaire is to gather information so we can better understand how many facilities have thermal treatment units that may emit mercury, how many facilities may be planning to add thermal units, and to obtain information about existing mercury controls, or the lack thereof. The requirement to provide information in the questionnaire is not built into the proposed regulations as we utilized existing authority to require the submittal of that information. I can report that we are seeing that information come in now, and if you've looked at the Gantt chart that we provided you'll note that the questionnaires are required to be submitted by March 20th, a few days from now.

With that brief overview of the program, I'd like to go over the regulatory provisions. I would like to apologize right upfront about the delay in getting you the LCB version of the regulations. LCB is allowed 35 days to review our draft regulations. This regulation package was provided to them on November 22nd and we received the final version at noon on Friday March 3rd. We reviewed the LCB version and have identified a number of technical and substantive changes that were not in the document that we originally included in your packet.

At the end of my presentation I will go through the specific changes to the LCB version that need to be made to bring the regulations back in line with the program document and the original intent of the program. Because this is a large and rather complex program that does not stand alone with Chapter 445B, but consists of changes throughout our existing regulations as well as many new provisions, I had planned to describe the program and point out the corresponding Sections in the LCB version of the proposed provisions to show where various aspects of the program can be found. I will be referring to the Gantt chart that we provided throughout my presentation as well. Once I've described the program, if there is a need to I can go through the proposed provisions line-by-line.

Since Sections 2 through 21 are definitions, I will be primarily discussing Sections 22 through 41. I'd like to start by having you look at Section 26. Section 26 requires the application of the best controls on thermal processes that have the potential to emit mercury and that are located at precious metal mining operations. This is a unit-specific mercury control requirement that is like other regulations in Chapter 445B that are established to control air pollution. This is the standard that is being set to control mercury emissions from these emissions units. The majority of what I'll be discussing today describes how sources must comply with this new mercury control requirement.

Earlier I had said that one of the program goals was to expand the VMRP program to all precious metal mining operations. To do so, the proposed provisions establish a three-tier classification system for thermal units located at the mining operations. You can find the three Tiers, cleverly called Tiers 1, 2 and 3, defined in Sections 19, 20 and 21 of the LCB version of the regulations.

Tier 1 units are existing thermal units that participated in the VMRP program. As we've discussed, these were the larger mercury emitters that installed mercury emissions controls prior to the development of this regulatory program. I'm going to skip over Tier 2 units for a moment and describe the Tier 3s next. Tier 3 units are thermal units that either have no mercury emissions, very low (or De minimis) mercury emissions levels. I'll describe how De minimis emissions are determined in a second.

With Tier 1 and Tier 3 you have the two extremes, with Tier 1 being the larger emitting units that have installed mercury controls and that are participants in the VMRP; and, the thermal units that emit mercury at De minimis levels or thermal units that have no potential to emit mercury at the Tier 3 level. Tier 2 units are simply all of the other thermal units in between.

With a basic understanding of the three Tiers, let me go on to describe how the proposed program gets started. Again, this is for existing units. I will describe new and modified units later. The program begins with the Bureau having to evaluate the information provided in the questionnaires and determining if a De minimis level of emissions can be established. The concept here is to weed out any processes that may have very low levels of mercury emissions. Some processes may not warrant spending considerable time and effort determining whether mercury controls could even be applied, or otherwise be warranted because of limited or no benefit from adding controls. These will be Tier 3 thermal units. One process that seems on the surface to fit this criteria are laboratory fume hoods.

De minimis is defined in Section 3 of the provisions, and the initial determination of De minimis must be made within 60 days after the effective date of the regulations in accordance with the provisions of Section 25. This is also shown on the Gantt chart on line 6. Section 25 also provides a facility the opportunity to request that a specific thermal unit be determined to be De minimis. This can be done at anytime and is not necessarily part of the initial determination. Any facility making this request must provide a demonstration as to why the unit should be designated as having De minimis mercury emissions. This allowance is provided to allow for evaluation of processes that may be unique to a facility, or for new processes that may come into play in the future.

The provisions in Section 25 require the agency to public notice all proposed determinations of De minimis for a period of 30 days to provide for public comment. The initial determination must

go to public notice even if there are no units that can be deemed De minimis or if there is no level of mercury emissions that the Division can deem De minimis. After considering all comments, the agency must take final action within 90 days after the date of the notice. This timeline is shown on line 7 of the Gantt chart. Again, these would be Tier 3 units.

Let me describe how a precious metal mining operation determines whether they have an existing thermal unit, and how they are regulated. First, a thermal unit is one that by definition is located at a precious metal mining operation and that uses direct or indirect sources of heat energy. That definition is contained in Section 17. An existing thermal unit is defined in Section 4 as one that is constructed before the date the Commission adopts the Mercury Program. If a particular unit is constructed before that date, the unit is an existing unit. If constructed after that date, it is a new thermal unit that has different requirements that I'll discuss later.

If a unit is an existing thermal unit, the next step is to determine the appropriate Tier. Again, I'd like to start with Tier 3 thermal units. As I mentioned, a Tier 3 thermal unit, which is defined in Section 21, is one that has no potential to emit mercury, or one that has a De minimis level of mercury emissions. A mercury emitting unit can be designated Tier 3 if it obtains permit conditions to limit its mercury emissions to a level below De minimis levels. Permit conditions could include operating parameters, limitations on throughput or hours of operation, but not add-on mercury controls. If mercury controls are required to lower the emissions to below De minimis levels, the unit would be considered Tier 2.

All Tier 3 units require an annual certification of their Tier 3 status. This annual certification provides a backstop mechanism to ensure that any changes that would alter the units' classification would not go on unchecked. Permission for any physical or operational changes to a unit that would result in an increase in mercury emissions must be granted through a permit prior to the change being made. If there are proposed changes to a thermal unit at a Tier 3 facility, those changes would be identified through the normal permit review process. If a mercury permit would be required, an appropriate modification application would need to be submitted.

All Tier 3 units are required in Section 29 to be permitted, but rather than applying for and receiving a mercury control permit, these units will be included in, and regulated under, a standard operating permit. Their existing permit must be revised to include limitations on the thermal unit to keep the potential to emit mercury below the De minimis level and to require the annual certification for all Tier 3 units. Also, if the mining operation has a Class III operating permit, it must file an application and convert the Class III permit to a Class II permit. As you may recall, Class III permits were developed for small operations that did not require complex permit requirements. I really don't think we have any mining operations under a Class III permit but we wanted to make sure if we did, that we had a way to bring them into the Mercury Program.

The Tier 3 applications to revise their current operating permits must be filed within 90 days of the Director's final notification of determining a De minimis level. This is shown in Section 29, subsection 2 and on line 33 of the Gantt chart. Once submitted, the existing Class II operating permit provisions in the NAC that govern the permit timelines take over and the permit is processed accordingly.

That takes care of the Tier 3 thermal units.

Next I'd like to discuss the Tier 1 thermal units. Tier 1 units are defined in Section 19 and are specifically listed in Section 23, all by mining operation, process and mercury emissions control technology. These are the thermal units that were part of the VMRP program. As I mentioned before, the installation of the best available controls or NvMACT at Tier 1 and Tier 2 units is accomplished in two steps – Phase 1 and Phase 2.

In the first phase all Tier 1 thermal units are required to obtain a mercury permit. This requirement is contained in Section 28. To do so, they must start by submitting a Phase 1 application within 90 days of the effective date of the program as required in Section 30. This timeline is also shown on line 9 of the Gantt chart. The first phase is designed to obtain a better understanding of the amount and type of mercury emitted from each existing unit, to establish sampling, operation and maintenance, monitoring, recordkeeping and reporting criteria for each existing unit and the associated mercury emissions control devices; and to ensure continued operation of the controls and that the controls are being operated effectively.

The Phase 1 application content for Tier 1 units is outlined in Sections 32 and 33. Section 32 specifically requires the submission of general information about the applicant, such as identification of each mercury emitting thermal unit, rates of production and operating schedules, and location of records. Under this Section the application must also include information regarding additional mercury controls for which any Early Reduction Credit is being requested, and any other information the Director deems necessary. I should point out that ERC controls are not just any mercury controls, but must be the best controls available at the time.

Section 33 contains specific requirements related to the existing controls including a description of any equipment used for controlling mercury emissions, and a proposed Monitoring Plan. The application must also contain an identification of any mercury controls that are "Presumptive NvMACT".

The Monitoring Plan required in the Phase 1 application must contain procedures for operation and maintenance of the thermal unit, and methods for monitoring and recordkeeping for mercury processes and emissions controls. The Plan must also include a proposed schedule for sampling and testing mercury emissions on an annual basis. The first round of testing must be completed before December 31, 2006. I can report that some of the mining companies have already conducted this initial testing and we are beginning to get that data back now. The Plan must also contain provisions for annual reporting of mercury emissions, the calculation of which is based on the emissions test results. And finally, the Plan must contain provisions for reporting all mercury Co-Product that is collected for off-site sale or recycling.

To facilitate getting requirements in place to ensure appropriate and continued operation of these mercury controls the Monitoring Plan submitted by the applicant must be complied with until the initial mercury permit is issued. This requirement is in Section 33, Subsection 2.

Let me take a minute to describe "Presumptive NvMACT". At the Federal level, Presumptive MACT serves as a statement of current knowledge of MACT, and serves as a basis for a decision on how to develop the emissions standard or emissions limitation for the source category. "Presumptive NvMACT" is the same thing only that it recognizes the existing VMRP control technology. The presumption in this case is based on the prior determinations made of the VMRP control technology as being MACT equivalent for the Federal HAPs program.

“Presumptive NvMACT” is a requirement to continue to operate existing mercury emissions controls which, only at the first Phase, do not have a specific emission limitation associated with them. That comes later in the process, should the controls be deemed to be NvMACT. I should point out the “Presumptive NvMACT” controls are defined in Section 16 of the proposed provisions and specifically listed in Section 22 for each facility.

Once the Bureau receives the Phase 1 application, we have 30 days to determine if the application is complete. Should the application not be complete, it is returned to the applicant and must be resubmitted within 15 days. These processing requirements are established in Section 35 of the regulations. The processing timelines are similar to the existing timelines for other permits that are processed by the Bureau. The date the application becomes complete sets the Official Date of Submittal.

Within 180 days of the official date of submittal, the Bureau must propose the conditions of the Mercury Operating Permit to Construct, identify any “presumptive NvMACT” controls, and evaluate any request for Early Reduction Credit. Our technical review must be completed and a draft permit developed within 180 days. This a very aggressive processing schedule.

For Early Reduction Credit, a very thorough review of the additional controls must be conducted before credit is granted. The Bureau must consider the following for each thermal unit: The best controls available for controlling mercury, measures that reduce or eliminate emissions through process changes, substitution of materials or other modifications to the process; enclosures of systems or processes to eliminate mercury emissions; collection, capture or treatment of mercury emissions; the design, equipment, work practice or operational standards for the unit including training and certification of operators; differences in age, remaining operating life and configurations of similar units; as well as differences in mercury in the ore and sizes of similar thermal units, or any combination of these. These requirements are contained in Section 35, subsection 2.c.

Still looking at Section 35, in Subsection 5 you’ll find a requirement that provides for a 30 day public notice and comment period. Like all of our operating permits to construct, all Mercury Permits to Construct are required to go to public review for 30 days. The notice must provide for a 30 day period for public comment and these provisions also provide for a public hearing should one be requested, they also require us to maintain records of all issues raised and the names of persons that commented.

Final action on the mercury permit is required within 12 months of the official date of submittal of the application. Final action must take into consideration all written comments, comments made during any hearing, and information submitted by any proponents of the project.

The contents of the mercury permit for a Phase 1 application are provided for in Section 36 of the proposed regulations. The requirements are similar to other permit requirements that we have currently in the NAC. This includes the more general requirements such as citing the legal authority, maintaining records for 5 years, allowing entry and so on. The mercury permit must also identify the mercury control technology for each Tier 1 unit. So each “Presumptive NvMACT” must be specified in the permit. Also, if any Early Reduction Credit is granted, the permit must require the installation and operation of those additional mercury controls. This timeline is shown on lines 13 and 25 of the Gantt chart. ERC controls must be installed and operational prior to the

submittal date for the Phase 2 applications. Otherwise, they would not qualify for the early reduction credit.

The permit must require monitoring methods adequate to show compliance. At this point in the process we'll have been able to evaluate the effectiveness of the Monitoring Plans for these units and will be using that information to establish the monitoring requirements in the permit. With the monitoring will come recordkeeping and reporting requirements including the annual requirement to conduct mercury emissions testing and the reporting of mercury Co-product. Again, the focus here is to ensure that the existing mercury controls on the Tier 1 units continue to be operated in the most effective manner possible.

So that completes the Phase 1 process for Tier 1 thermal units.

That leaves the Tier 2 thermal units and their requirements under Phase 1. So to recap, the Tier 2 units are those that have the potential to emit mercury at levels above any De minimis level set, but that were not part of the VMRP. These thermal units are expected to range from units that have no mercury controls to those that have either a specific mercury control device or achieve some mercury emissions reduction through the use of a control device designed for other pollutants but that yields some mercury reduction as a co-benefit.

The requirements for application filing, permit processing and permit content for the Tier 2 units are very similar to that of the Tier 1 units. So much so that LCB combined many sections and they now begin with "For each Tier 1 and Tier 2 thermal unit that emits mercury...". While this cuts down on duplication of provisions it can make it a little difficult to read. I'll do my best to draw out the significant differences between the two Tiers.

Tier 2 application filing requirements are also contained in Sections 28 and 30. However, the application for a Tier 2 unit is required to be submitted within 180 days of the effective date of the program rather than 90 days for Tier 1 units.

Similar to that of the Tier 1 units, Sections 32 and 33 of the regulations describes the Tier 2 application content. The application must contain general information about the applicant, applicable processes, and a description of any controls for mercury. It must contain a proposed Monitoring Plan with the same requirements as those of the Tier 1 units except for the stack sampling frequency. Tier 1 units are required to conduct testing on an annual basis, and participate in the initial testing that is required prior to the end of this year. Tier 2 units required to propose a schedule for testing, but are not being held to the annual minimum for testing or the initial testing that is required before the end of the year. We'll determine the frequency of testing for these units when we develop the permit. This difference can be seen by comparing the requirements in Section 33, subsection 2.a and 2.b. As with Tier 1, the proposed Tier 2 Monitoring Plan must be complied with until the mercury permit is issued.

Action on the application for a Tier 2 unit is the same as I described before for Tier 1. Thirty days for completeness, 180 days to process application and develop draft permit conditions, 30 day public comment period, and final permit action within 12 months of the official date of submittal. This process is contained in Section 35. Also, Early Reduction Credit is provided for in the same manner as I described for Tier 1 units. Anyone can propose to install additional controls during the Phase 1 period and be eligible for the credit program.

Permit content is described in Section 36 and is similar to that of the Tier 1 permit conditions. General conditions are required as specified in Subsections 1 and 2. Should a Tier 2 unit have mercury controls installed, they are required to be maintained and operated just like those of a Tier 1 unit. Any additional controls for the Early Reduction Credit program will be required in the permit just as with the Tier 1 units. We are hopeful that we will see several Tier 2 units take advantage of the ERC as this will get mercury controls in place even sooner.

For facilities that have not filed an application for a unit because they were waiting for the De minimis determination, and they find out that they have a unit that is not De minimis, they must file a Phase 1 application within 90 days of the Director's determination of De minimis. You can find this requirement in Section 31. Likewise, for a facility that has filed an application and received a permit, but did not include a unit because they were waiting for the De minimis determination, and they find out they have a unit that is not De minimis, they have to file a Phase 1 application within 90 days to revise the permit.

So that's it for Phase 1.

The requirements of the program developed in Phase 1 leads us to the process of determining what will constitute the best available mercury controls, and establishing the timeline for installation and operation of those controls. That's Phase 2.

So by now, all existing thermal units either have Class II permit conditions that limit their potential to emit mercury to levels that are below De minimis (Tier 3), or have obtained a Mercury Operating Permit to Construct through the Phase 1 Requirements (Tier 1 & 2).

To comply with the emissions control technology requirement of Section 26 that I discussed earlier, the existing thermal units, both Tier 1 and Tier 2, must file a Phase 2 application. The Phase 2 application filing requirements can be found in Section 30, Subsection 3, and the corresponding timelines shown on lines 15 and 27 of the Gantt chart. The Phase 2 application must be filed within 21 months of the effective date of the regulations. As with a Phase 1 application, Section 32 sets forth the general criteria required in the Phase 2 application.

Section 34 provides the requirements regarding the specific criteria for a Phase 2 application. Here, the applicant must provide a NvMACT analysis. That is, they have to provide an analysis that determines the method of control or other limitations to be applied to the thermal unit for the reduction of mercury emissions that the applicant believes is sufficient for the Director to determine that the methods of control are the best available and constitute NvMACT. The analysis must also provide a list of similar thermal units that emit mercury and used for precious metal mining that includes methods and technologies for mercury emissions control, the level of mercury emissions associated with each method or technology, the design for each method or technology to control mercury emissions, costs associated with reductions of mercury emissions, costs associated with energy for each method or control technology, any non-air quality health and environmental impacts and energy requirements for each method or control technology consistent with Section 112(d) of the Clean Air Act.

The applicant must also provide another proposed Monitoring Plan as these requirements may change depending on the control that is determined to be NvMACT, and on the availability of new monitoring technologies such as mercury Continuous Emissions Monitors. This time the plan must again contain procedures for operation and maintenance of the thermal unit. Methods for

monitoring of and recordkeeping for any controls for mercury processes and emissions and a proposed schedule for testing that must be conducted on an annual basis. Here now, Tier 2 thermal units are required to conduct testing annually. And as before, reporting of mercury emissions and mercury Co-product is required on an annual basis.

So with the Phase 2 application submitted and including the applicant's NvMACT analysis, the Bureau must process the application and revise the Mercury Operating Permit to Construct. Again, these provisions are contained in Section 35 and the timelines for processing are shown on lines 16 and 22 of the Gantt chart. Just as before, the Bureau has 30 days to review the application for completeness, but has 9 months after the official date of submittal to propose conditions for revising the mercury permit to include NvMACT, rather than 180 days as is allowed for the Phase 1 application review period.

The proposed conditions of the revised permit and the determination of the mercury control technology determined to be NvMACT is provided the same public process for review and comment as the Phase 1 permits. These requirements are contained in Section 35 as well.

Section 36 contains the permit requirements for the Phase 2 permit revisions. The provisions require the permit to be revised to include what the Bureau determines to be NvMACT and the corresponding emissions limitation. The revised permit must require the installation of the NvMACT controls within 24 months of the permit being revised. This timeline is shown on lines 18 and 30 of the Gantt chart. If a thermal unit has been granted Early Reduction Credit, the NvMACT controls must be installed within 48 months from the date of issuance of the revised permit. This provides the extension of time to install the NvMACT controls granted under the ERC program.

So I've talked about the Phase 2 application filing requirements, the processing timelines, public notice and review, and permit content. I'd like to take a moment and discuss the process for determining the NvMACT controls. In Section 35, Subsection 3, the determination of NvMACT is to be based on seven criteria. The maximum degree of reduction in mercury emissions that is achievable, the measures that reduce the volume or eliminate mercury emissions through process changes, substitution of materials or other modifications, the enclosure of systems or processes to eliminate mercury emissions, the collection, capture or treatment of mercury emissions, the design, equipment, work practice or operational standards of the thermal unit, the differences in the age, remaining operating life and configurations of similar units that emit mercury, or any combination of these criteria. As you can see, this is a very comprehensive level of review that each thermal unit will be evaluated against.

There is one last point that I'd like to make regarding the determination of the NvMACT controls. You'll note that under Section 35, Subsection 3.b.1, there is a reference to section 112(d) of the Clean Air Act. This section says that we'll consider determining the maximum degree of reduction in mercury emissions in accordance with this section, and consider any non-air quality health and environmental impacts and energy requirements. Many of the comments we received had to do with this provision and understanding what this section of the Clean Air Act actually requires. There is quite an extensive history associated with the Section 112 provisions and while I don't want to get into a complete dissertation, I do think it is appropriate to provide some background.

To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

So to be clear, the NvMACT determination process that we are proposing here today is not a risk-based determination. Rather, it is a determination based strictly on a technology review and the application of the best available controls for each type of emissions unit.

That's it for existing thermal units. Let me briefly go through the process for new and modified thermal units. As I said earlier, a new thermal unit is one that obtains a permit after the effective date of the program. A modified unit is one that is requesting a physical or operational change that will result in an increase in emissions after the effective date of the program.

The application filing requirements contained in Section 37 for a new or modified unit require the submittal of an application and the issuance of a Mercury Operating Permit to Construct prior to constructing the new unit or modifying the existing unit. These requirements are similar to the Phase 2 application requirements. The provisions for processing these applications can be found in Section 38. New and modified units are required to install NvMACT controls as a condition of the mercury permit they are issued. The NvMACT determination process is the same as I described before. Applications have a 30 day completeness period and a proposed permit must be made available for public review and comment within 180 days. The public comment period is 30 days with the allowance for a public hearing. This is the same as I describe before. The final

permit must be issued within 60 days following the end of the comment period. The requirements for permit conditions are contained in Section 39, but are the same as those that I discussed for the Phase 2 permit. Essentially, the permit requires NvMACT, associated emissions limitations and all the testing, monitoring requirements necessary to demonstrate compliance, and the reporting of mercury emissions and Co-product annually.

A couple of final notes regarding the Mercury Operating Permit to Construct. If a facility is required to have a Title V Operating Permit, the conditions established in the mercury permit are required to be made part of the Title V permit as they constitute new applicable requirements. The mechanism that we established in our regular Operating Permit to Construct program provides a Title V facility the ability to submit an application within 12 months of commencing operation of any new units that are identified in the construction permit. There is also a mechanism for amending the Title V Operating Permit if there is a conflict in requirements between the Title V permit and the construction permit. We are proposing to utilize this same mechanism to fold the conditions of a Mercury Operating Permit to Construct into the Title V permits and to provide for amending a Title V Operating Permit if there is a conflict between the two permits. You can find these provisions in Section 56 of the proposed regulations.

For a new or modified thermal unit, the Mercury permit can expire if construction is not commenced within 18 months. So if a unit is not built the permit expires. This is contained in Section 41.

MERCURY CONTROL INSTALLATION TIMELINES

I wanted to make one last reference to the Gantt chart. On the chart you'll notice that there are a few timelines that are shaded yellow. These are the timelines for required mercury emissions control installation. I wanted to provide as clear a representation as possible regarding when new mercury controls are to be installed. This has been provided to allow everyone to see when the controls from the Early Reduction Credit come in to play, and when the NvMACT controls must be in place.

FEES & STAFF

So now that I've described the process for getting the best mercury emissions controls in place, I need to briefly describe how the Bureau intends to provide adequate staff resources and the mechanism for funding those resources. If you take a look at Section 41, you'll find the fee requirements for the Mercury Program. This fee schedule is based on the need for two additional Staff Engineers to process permits and conduct inspections of the thermal processes and their associated controls. Two additional staff and their associated overhead costs are approximately \$300,000 for the first year, and \$250,000 each year thereafter.

Section 41 contains the mechanism by which this funding will be generated. We had expected LCB to weave these requirements into our existing fee section, but they elected to develop a separate section which you see here. Subsection 1 of Section 41 establishes a one-time fee for the Phase 1 applications. The application fee is developed by taking \$50,000 and dividing it by the total number of stationary sources that are required to submit a Phase 1 application. This effectively distributes the application fee across all of the affected facilities.

The total number of stationary sources are to be determined by the Bureau based on information received from the questionnaires and from any Phase 1 applications that may be filed prior to the fee being determined. This determination must be made within 104 days after the effective date

of the regulations. Once the fee distribution is calculated, the Bureau must invoice the stationary source with the fee being due within 30 days of receipt of the invoice or when the Phase 1 application is submitted, whichever is later. For a new or modified thermal unit, or for the revision of a mercury operating permit to construct, the application filing fee is simply a flat fee of \$5,000.

Section 41 also provides for an annual maintenance fee. For fiscal year 2007, the maintenance fee for each thermal unit is based on dividing \$250,000 by the total number of thermal units in the program. This has the effect of distributing the total program costs across the thermal units. The more thermal units a mining operation has, the more they pay each year. The less thermal units they have the less they pay. The more units that are part of the program the less each thermal unit's individual cost is. The number of thermal units must be determined by the Bureau on or before May 1, 2006, for fiscal year 2007. Combining the \$50,000 from Phase 1 applications and the \$250,000 from the thermal units, we achieve our \$300,000 total for fiscal year 2007 which begins July of 2006.

For each fiscal year thereafter, the same concept applies that the total number of thermal units in the program are divided into \$250,000, only without the Phase 1 application filing fee. The number of units is determined on or before May 1 of each preceding fiscal year. This will ensure that the \$250,000 needed each year is generated, but continues to distribute the per unit cost across all thermal units.

As with our other fee provisions, there is a penalty section that provides for an additional 25% late fee for any late payments. This is contained in Subsection 4 of Section 41. I think that's all I wanted to mention about fees.

The balance of the provisions contained in Sections 42 through 59 contain changes to the existing NAC provisions to allow for the mercury program to be integrated into the balance of the Chapter 445B provisions. I hadn't planned to go through those in detail but if there are any questions I can.

REGULATION DEVELOPMENT PROCESS – COMMENTS

I would like to spend a little time talking about the regulation development process and comments that we received. To get a true picture of the regulatory process, you really need to go back to over a year ago. Since our initial meetings with industry to discuss the program review and the need for enhancements, we have held over three dozen meetings with industry, environmental groups, the states of Utah and Idaho, EPA (Regions 8, 9, 10 and HQ), researchers, and the public; provided information to legislators and the Governor's office; set up a mercury website; made presentations at Regional meetings of western state air directors; applied for and received federal funding for mercury research; prepared and published a plain English version of our proposed program; drafted press releases; responded to countless calls from the press; regularly notified interested parties of our progress through a list serve that currently contains over 160 listings; and, responded to innumerable phone calls and emails.

The formal public process started in December with a workshop in Carson City held on December 15th. Approximately 33 people attended. Although a second workshop had been scheduled in Elko on December 13th, that workshop had to be rescheduled because bad weather forced the cancellation of our flight. We did hold a 2nd meeting the following week in Elko on December 19th and approximately 29 people attended.

In addition to the comments received during the workshops, the Division has also received significant written comment regarding the proposed provisions. I should point out that we received a lot of comments that go beyond what this program was designed to do. I would like to provide the Commission with a copy of all of these written comments so they can be made part of the record. If I may Mr. Chairman, I'd like to provide Exhibit 1 which contains the written comments.

To effectively evaluate all of the comments provided to the Division we created a summary document in which all comments were reviewed and sorted by common issue. This document contains a summary of each group of comments, the number of times a particular comment was made, and the Divisions response. Again Mr. Chairman, If I may I'd like to provide this summary document to the Commission as Exhibit 2. (*See Appendix 3 in this document*)

While I had not planned to discuss each of the comments, there are a few that I do think are worth mentioning, particularly those that resulted in a change to the program. We received several comments that suggested that we require the reporting of mercury by-product (or Co-product) so that a record of how much material is collected and shipped off-site could be maintained. As I've discussed, this requirement has been included in the program and the corresponding regulations.

Another comment that we received was, what happens if an existing unit submits an application but it is deemed incomplete and returned? There was no specific requirement for the applicant to resubmit. Here again, we revised the program to include this change and there is now a requirement to resubmit any incomplete application within 15 days.

There are also comments that we received where we did not make changes to the program and that I think are worth mentioning. One of the biggest issues raised, was that the program lacked a mechanism to evaluate public health and environmental impact through a risk-based evaluation. I discussed this issue a little when I went through how Congress and EPA struggled with a risk-based approach, but I think it's worth mentioning again. As I described earlier, this program evaluates and requires the installation and operation of the best mercury controls available. The determination process is strictly based on a control technology review and not a risk-based analysis consistent with section 112(d) of the Clean Air Act.

One other comment that was raised that I think is worth mentioning was the request to include requirements for using mass balance methods to determine mercury emissions from thermal units. Because of the large quantities of ore that are processed in the thermal units and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the processing activities with any relative accuracy or certainty.

Another comment was why we did not require ambient monitoring as part of this program. Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard. Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

Another comment was why we weren't looking more closely at fugitive emissions. Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

The last comment that I wanted to discuss was the regulation development process. We received several comments that suggested that the process was flawed and it did not allow ample time to understand the program or review the regulations. The provisions only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Division's control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1st contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1st version.

CHANGES TO LCB VERSION OF THE REGULATIONS

As I said earlier, after reviewing the LCB version of the regulations on Monday, we have identified a number of technical and substantive changes that were made by LCB that are not consistent with the program as we have proposed it. After talking with LCB we have been advised that LCB will make the technical corrections such as typos, and correcting our Suite number throughout the provisions.

Substantive changes that affect the program are changes that we need to clearly identify and ask the Commission to consider correcting as part of the adoption. For these changes we have prepared a redline strikeout version of the sections that are in error. If I may Mr. Chairman I'd like to introduce into the record Exhibit 1 – Changes to LCB File Number 189-5.

If I may, I'd like to go through each of the sections and explain the changes that we are proposing to the LCB version of the provisions. The language that has the strike through is language that we are asking to have removed. This is the red language for those of you who have color copies. The new language is the language that is underlined. On the color copies this language is in green. The rest of the language is the original from LCB, or the dark blue language.

So in Section 1 we are proposing to remove subsection 3. This was language that LCB added that is not consistent with what Presumptive NvMACT is.

In Section 21, "Tier-3 thermal unit" we are proposing to strike the language shown in red. For some reason, LCB added the language about a unit being constructed before the date the commission adopts the program which is incorrect for this definition.

In Section 28, we are asking to add the language "submit an application on a form provided by the Director and" to make it clear that the owner or operator of the stationary source must use the Directors forms for the application. We had asked LCB to include this but they failed to do so.

In the next three Sections, 34, 35, and 37, LCB changed the language that we had proposed when referring to section 112(d) of the Act from “consistent with” to “In accordance with”. This introduces a problem in that we believe that the term in accordance with may be interpreted to mean that we need to follow an Act specifically. As I discussed earlier, the Division is simply relying on the principles established in section 112 and think that it is more appropriate to change the terms back to “consistent with”.

In Section 39, subsection 3, all mercury operating permits to construct issued for new or modified units must include the requirement to apply NvMACT controls. This language was inadvertently left out of the LCB version so we are requesting that it be added accordingly.

Lastly, Section 52, subsection 8, LCB mistakenly added language about stationary sources into this subsection when it is only suppose to apply to thermal units and not the stationary source as a whole.

With that, I would ask the Commission to consider replacing each of the LCB sections with these that have been corrected. That completes my presentation. **(End of prepared statement)**.

Discussion By the Commission:

With the completion of Mr. Elges’s presentation, the Commission entertained a short discussion about the process involved in making changes to regulations and how those changes are “accepted” by LCB. Mr. Elges noted that LCB cannot change the substance of a regulation that is adopted by the Commission. Mr. Walker noted that a very formal process of submitting the regulations to LCB – noting any changes made by the Commission – is followed to insure the Commission’s intent is not misrepresented.

Commissioner Sponer then asked Mr. Elges about fugitive mercury emissions. Mr. Elges noted that this regulation does not and was not developed to address any emissions outside of mechanical processing equipment, i.e. point sources.

Next, Vice Chairman Coyner asked if Mr. Leo Drozdoff would like to make summary comments.

Mr. Drozdoff provided the following remarks: As you heard, the program that we are proposing will no longer be voluntary. Although the voluntary program was a great success and has reduced Hg emissions in this industry sector by over 80% in a three year period, we feel that the program outlined today is a significant step forward even from that success. This program ensures that all of the mining facilities with the potential to emit Hg from thermal processes are controlled and that those controls are operated and maintained in a way that results in the greatest reductions possible under a program that is fully enforceable and permissible.

Yet, even as good as this program is, there are still a number of moving pieces and change is inevitable. As Mike indicated, we are continuing to collect information from the industry through a questionnaire that we sent out in mid-January. The questionnaire must be returned to us by mid-March. Based on the information we receive, we will be establishing de minimus levels, and determining which additional facilities, of those not currently participating in our voluntary program, will be required to install the best available control technologies. We will also be using that information to assess existing control technologies as the starting point for our NV MACT determinations. The establishment of the de minimis levels or processes will be done as a full

public process. In addition, Hg permits will need to be established, evaluations of available control technologies will be done, and Hg MACTs established for each type of emission unit.

Again, each of these permitting steps requires a public process. In addition, research continues to be conducted on a number of fronts, i.e. at universities and by numerous state and federal agencies. Although we have included a five-year review cycle in the regulations, we know that in the near term, the program will also need some changes. As our knowledge of Hg and its impacts increases, we are committed to continually evaluating the effectiveness of this program and making changes as necessary.

However, and I want to be clear here, we also feel that it is critically important that the program that we have presented to you be adopted today in its entirety. The program revisions being proposed have been extensively evaluated and we feel that they ensure that the best available controls will be installed as soon as possible and operated as efficiently and effectively as possible. There is no research or future data that warrants waiting to adopt this program. Too much money can be spent trying to explain fate and transport and, given the current state of mercury research, you may not get answers for decades. In fact, I would argue that the most responsible thing that we could do would be to get the most robust Hg controls in place as soon as possible – and this program does just that.

Another critical aspect of this program is the funding. The Division has expended significant resources over the past year developing this proposed program and we have done that by robbing Peter to pay Paul. Many of our other programs have taken a backseat to this issue and they are suffering. We cannot continue to work on our mercury program to the extent that we have over the past year without additional resources. Any changes or enhancements to this program require the funding that is included in this proposed reg package. Thank you very much for your time and we will answer any questions. **(End of prepared remarks)**.

Vic Chairman Coyner thanked Mr. Drozdoff and then asked the members of the Commission if they had any questions of the Division about the mercury regulations.

Commission Hugh Ricci asked about thermal process that would be subject to the regulation. Mr. Elges noted that processes that could/would emit mercury would be covered by the regulations.

Mr. Ricci asked about fugitive mercury emissions and ambient standards in the biosphere. He asked if it would be possible to establish a background number downwind from Nevada mining facilities in an effort to measure mercury emissions. Ms. Cripps responded by advising the Commission about a University of Nevada program that is involved in a national network of mercury monitoring stations (i.e., a research effort to define ambient “background” mercury levels in the environment). She further noted that NDEP was recently funded by EPA to begin a monitoring program in Nevada, however, she also stated that defining a footprint for mercury in the environment (i.e., where the mercury comes from) is quite problematic from a scientific perspective.

Next Vice Chairman Coyner asked Mr. Elges about continuous emission monitoring; Mr. Coyner noted that NDEP received numerous comments on the issue; likewise he inquired why the regulations only required annual testing (i.e. monitoring). Mr. Elges noted the technology for continuous emission monitoring was not well proven for the variety/diversity of thermal mining process that would be subject to the regulations. Regarding annual testing, Mr. Elges said the

normal permitting practice by the Division is to conduct emission testing at the issuance and renewal of the permitting process (e.g., every 5 years). He noted that other monitoring and reporting data required by the permitting process is used along with testing to assess compliance. Mr. Elges further stated that after receiving numerous comments on the regulations about testing, the Division decide to incorporate annual testing of the thermal units being regulated.

Vice Chairman Coyner ask for any further questions of the Division; there being none he acknowledged the presentations by the Division along with questions from the Commission had taken two hours. He then stated that the remainder of the meeting (two hours) would be devoted to public comments on the mercury regulation.

Vice Chairman Coyner opened the meeting for public comment.

Public Comments:

The first speaker was **Glenn Miller, PhD, professor at the University of Nevada, Reno.** Mr. Miller talked briefly about his professional background and his board affiliations on several Non-Governmental Organizations (NGOs) in the community.

Mr. Miller noted to the Commission that he recently finished a report funded by EPA on mining in Nevada. He indicated that he and some other scientists were responsible for setting up several “mercury depositions sites” in Northern Nevada; however the funding for the program had expired. With that he said one of his comments and concerns to the Commission would be identification of new funding to continue the “ambient” mercury monitoring program. He said such a program is needed to understand what the environmental impacts of mercury emission from mining in Nevada might be.

Mr. Miller continued by commending the staff work done by NDEP on the mercury regulations, albeit noting he didn’t necessarily agree with the outcome of the regulations. He also commended the mining industry for reducing mercury emission to the environment. He did say however that most of those reductions came from just one mine – Jerritt Canyon.

Mr. Miller then talked about mercury as a highly toxic element. He said mercury is probably the single element that is causing an offsite risk in the mining industry. He talked about mercury contamination in fish – (data from the Nevada Division of Wildlife) and that fish in some streams and lakes in Nevada should not be eaten, at least by pregnant women and children. He mentioned Wild Horse reservoir has mercury sediment issues. He also said that once mercury is deposited in lakes and streams it just remains there – and could be there for 500 years. Doctor Miller said the regulations proposed by NDEP falls far short in addressing the problem. He said streams and lakes in Idaho and Utah now have fish advisories for mercury contamination and that even a duck advisory is in place – he then said “can you eat the ducks you shoot in Northern Nevada?”

He noted the regulations focus on a technology based approach, however mercury is still being “kicked out” and it remains a threat to human health and the environment. He asked what is the effectiveness of the proposed “capture process” (i.e. per the Nevada MAC). He said mercury levels could even go up if the mining industry gets into a high mercury ore body. He also said there should be some criteria we want to protect, “do we want to protect fish, pregnant women, children, etc.?”

Regarding funding, he said that just \$60,000.00 is proposed in the regulations for monitoring (testing). He said this was not sufficient. He asked why NDEP could not do quarterly monitoring. Doctor Miller then asked about ambient monitoring – noting there is no requirement to do any ambient monitoring in the regulation.

He asked “how much mercury is in the air – we need to do ambient monitoring.” He also said there is no “mass balance” for mercury. He said there is no way to tell how much mercury goes into a facility and then how much might come out. He said the mercury should be measured through a mass balance analysis.

Mr. Miller concluded his comments by focusing on the money that will be spent to implement the new mercury regulations. He said that “two guys and a pickup just doesn’t make it.” He noted that money should be available for ambient monitoring. He said that another \$500,000.00 a year is needed to support an ambient monitoring program. He conclude by asking the Commission to delay the regulation, noting that sufficient funding, analytical measurements, and an assessment of mass balance needs to be included in the regulation.

The next speaker was Elyssa Rosen representing Great Basin Mine Watch. She began her comments by showing the Commission a diagram of mercury hot spots in Nevada. She noted that 5,000 pounds have been released in four northern counties in 2003. In the last 25 years she said approximately 100 tons of mercury has been released into the air by the gold mines in Nevada.

She said mercury from gold rosters is moving downwind. She also noted the Nevada’s program will not reduce mercury emission while other states are actually reducing mercury emission (from coal power plants). She went on to say the regulation fails to address the cost to human health. No emission caps or reductions of mercury emissions are addressed by the regulation; it does not address the fugitive emission problem, nor is a strong testing program mandated for fish and water fowl. Ms. Rosen asked the Commission to delay the regulation until a meaningful mercury reduction program is in place.

She also raised concerns about the methods the Division used to involve stakeholders, particularly from downwinder states, She said the Division failed to have adequate consultation with wildlife agencies and she noted the final regulation was not available in a timely manner.

Commissioner Coyner ask for questions -- Commissioner Henderson responded by asking Ms. Rosen if she had been involved in the consultation process with the Division on the regulation from the beginning. She said yes, the points noted here have been presented throughout the process. Commissioner Henderson then asked if she had offered specific suggestions for the regulation – Ms. Rosen said no, she had not provided specific language for the most recent draft of the regulation.

The next speaker was Justin Hayes from the Idaho Conservation League in Boise. Justin talked about fish in Idaho lakes and streams that are now contaminated by mercury air emissions. His opening remarks to the Commission focused on the relationship between mercury emissions and human health. He noted there is a significant level of agreement in the professional health community about the negative health effects of mercury – particularly for children. He focused his comments on health consequences, such as mental retardation. Commissioner Coyner

intervened in the conversation by stating the Commission was well aware of the health effects of mercury in the environment – he implored Mr. Hayes to focus his comments on the substance of the mercury regulations.

Mr. Hayes then addressed the fishing issue in Idaho – focusing on mercury advisories that have been issued to explain the health dangers of fish consumption. He then presented the Commission with a map showing air modeling data. The map demonstrated how mercury air emissions from Nevada gold mines have been deposited in lakes and streams in southern Idaho. He noted the Idaho has become a “downwind” receptor of mercury emissions.

He then addressed the fugitive mercury air emissions issue. He explained how he used a portable mercury monitoring device to assess background mercury levels throughout northern Nevada – noting that 5 nanograms per cubic meter was the typical background level. He then presented mercury emission data from various points of dispersal downwind from selected gold mines in Nevada. The monitoring data showed as much as 700 nanograms per cubic meter of fugitive mercury emissions from various downwind points located on public roads. He said the fugitive mercury air emission in Carlin, Nevada registered 10 times the natural background.

In closing, Mr. Hayes said it would be a mistake not to include a fugitive emissions component in the mercury regulations. He said there is a need for additional controls to reduce the amount of mercury emissions to the environment in Nevada, Utah and Idaho. He questioned the concept of the “Nevada MAC” in terms of schedules and he asked for a numerical limit on emissions and a program to control fugitive emissions.

Commissioner Ricci asked Mr. Hayes about the difference in mercury concentrations in the environment between northern and southern Idaho. Mr. Hayes noted there were existing sources of mercury contamination in northern Idaho, which had been traced to a superfund site in Idaho – but that was not the case in southern Idaho – where the emissions are believed to be from Nevada’s gold mining operations.

The next speaker was Tim Wagner – Utah Chapter of the Sierra Club, Salt Lake City. Mr. Wagner provided the Commission with some background about his environmental activities in Utah. He then talked about mercury testing in Utah and New Mexico, noting that Utah only recently started testing for mercury in selected streams and lakes. He then gave the Commission some additional information about press accounts that had recently focused on mercury air emissions for northern Nevada that were contributing to mercury contamination in Utah’s streams and lakes. He advised the Commission that Utah recently issued a duck advisory -- the first mercury advisory for waterfowl in the country. He noted Utah environmental officials have recently instituted a large scale fish sampling program across the state. A Utah mercury working group has also been established in effort to identify the sources of mercury in and around the Great Salt Lake. He said the lake is widely used by waterfowl from around the country. He requested the Commission to revise the regulation to require ambient air monitoring, adjustment of the MAC schedules and incorporation of a mass balance approach.

The next speaker was Lee Loudon – Crescent Valley, NV. Mr. Loudon advised the Commission that he lives right next to the big gold mines in northern Nevada. He said he was very concerned about mercury emissions in Nevada. He requested the Commission not let the mines regulate themselves.

The next speaker was Roger Featherstone -- southwest circuit rider for Earthworks. Mr. Featherstone provided the Commission with some background about Earthworks – noting it's an organization that protects communities from the impacts of mining, (Earthworks is commonly known as the Mineral Policy Center). He said Earthworks would have provided written comments on the proposed regulations; however he advised the Commission that the regulations were not made available in a timely manner. Because Earthworks was not given the opportunity to provide timely comment on the regulations, Mr. Featherstone requested the Commission to postpone any action on the regulations. He noted the rule making process lacked adequate citizen involvement, it failed to contain provisions for the reduction of mercury emissions and while NDEP officials have stated the regulations could be altered in the future, he said that rarely happens.

He went on to say the mercury regulations requires only one monitoring test per year and the test would be conducted by each gold mine – he said monthly testing should be done and that monitoring of fugitive emissions from tailing piles and other sources should be done monthly. A third party – not the companies – should do all the testing. He also said that an emission cap should be required. As it stands, the regulations fail to put forth a goal for capping mercury emission at some level. He further stated that the costs for reducing mercury emission are well within the bottom line of the gold companies and that offsite monitoring should be done and it's relatively inexpensive. Mr. Featherstone concluded his comments by requesting the Commission to postpone the regulations until they can be revised to address ambient monitoring, emission caps and other methods to protect human health and the environment.

The next speaker was Tina Nappy – chairperson, Tyobe Chapter of the Sierra Club. She advised the Commission that the Sierra Club is an outdoor organization and that club members assume the waters in Nevada are clean. She said we should not play around with mercury in the environment and that we are a tourism state. She asked the Commission not to take any action on the regulation until it can be strengthened.

The next speaker was Wayne Garcia -- Tribal Chairman for the Yerington Paiute Tribe. Mr. Garcia thanked the mining industry and NDEP for moving forward with the mercury regulations. He did say that fugitive emissions remain problems for human health and it should be part of the regulation. He called for a reporting and ambient air monitoring of mercury fugitive emissions.

The next speaker was Bill Comas - citizen. He gave the Commission some sociological background about his childhood and how his friends played with mercury and never got ill. He gave other similar examples of mercury exposure including his own experiences at Bald Mountain, Nevada. He suggested the Commission should assess just how dangerous mercury is to human health.

The next speaker was Jamie Greening, resident of Crescent Valley. She said she lives very close to the Cortez mine in Nevada. Her comments focused on human health issues related to mercury in the environment. She said independent monitoring should be done on a regular basis. She ask the Commission to postpone any action on the regulations.

Mining Industry Comments:

The next speaker was Russ Fields, Nevada Mining Association. He said he was here today to support the regulations. He advised the Commission that this new regulation would serve as a model for regulating mercury air emissions from mining operations. He said the voluntary

program was very successful in reducing mercury air emissions from gold mining operations, and that these new regulations will even go further in reducing mercury emissions to the environment. Mr. Fields said that this is the first effort to regulate mercury emissions from gold mining operations; he encouraged the Commission to adopt the regulations as proposed.

Commissioner Henderson asked Mr. Fields what the effects might be on the mining industry if the Commission delayed action on the regulations. Mr. Fields said it would not affect industry; it would just be one less permit and fee to pay. He then said the question should be what would be gained by delaying – and he said nothing would be gained. The regulation would make all precious metal operations subject to these new regulations and that the best available control technology would be deployed to reduce mercury emissions to the environment.

Commissioner Dodgion asked Mr. Fields if the industry would support additional fees for ambient monitoring to include fish and wildlife resources. Mr. Fields said that if NDEP brought a proposal forward – beyond the mercury regulation in a public process, then industry would likely support it. Commissioner Anderson asked Mr. Fields if the industry would consider an “Adaptive Management Approach” to address the mercury air emissions problem. Mr. Anderson noted in his field, “Adaptive Management” is used to respond to new technologies and information. Mr. Fields noted the mercury control technology is changing all the time and thus yes, adaptive management is the approach that is being used.

The next speaker was John Mudge, Director of Environmental Affairs -- Newmont Mining.

Mr. Mudge said Newmont employs 3,200 people in Northern Nevada. He said that when mercury became an issue, Newmont signed up to the voluntary program. He provided the Commission with detailed background on the types of controls now used by Newmont for reducing mercury emissions from mining operations. He did note the new program will require best control technologies. He further noted the inherent problems of defining a risk analysis to assess health effects of mercury in the environment. Beyond exposure to workers, defining a safe level of mercury exposure for the general public is just not yet feasible, he said. He went on to say that’s why a technology approach for reducing mercury at the industrial sources is the best approach.

Regarding fugitive emissions, Mr. Mudge said he is interested in finding out what level of emissions are coming off the mining pits and leach pads and if those emissions are significant compared to natural background, i.e., baseline conditions. He said Newmont is a proponent of additional research for understanding fugitive mercury emissions.

Regarding testing and monitoring, he said the key is actually the everyday operation of the equipment and providing the source data for those operations to the regulator. He noted while annual testing is burdensome, the industry has signed up for it. He concluded his remarks by stating that the focus of the Clean Air Act is on best control technologies instead of the risk approach and this new Nevada mercury regulation follows that logic.

The next speaker was Jerry Hepworth, Environmental Manager Core Rochester Mine. Mr.

Hepworth advised the Commission that the mining industry has been proactive in supporting this new regulation. He said Rochester is a heap leach operation only. It’s just a silver mine. He provided the Commission with the technical background of the Rochester mining operation regarding various mercury control technologies. He said this new regulation is based on a success story archived through NDEP’s voluntary mercury control program. He then asked the Commission to adopt the regulation.

The Next Speaker was Rich Haddock, Vice President of Operations, Barrick Gold Corporation. Mr. Haddock said the common theme with this new regulation is the concept of maximum achievable control technology (MACT). He said the regulation requires continuous improvement or adaptive management. "It's not a cap and trade program and it doesn't require continuous monitoring but it does require the best control technologies for controlling mercury emitting sources, he said." Mr. Haddock said the Mining industry has "come to the plate" to address and reduce mercury emissions. He noted that he lives in Salt Lake City and that everyone is a downwinder from somewhere. He said that globally mercury is an important issue and that we should all be doing our part to reduce emissions to the environment.

Regarding ambient air monitoring, Mr. Haddock provided the Commission with a comparative analysis of standards for mercury exposure for humans -- against known background levels. He talked about the real relevant exposure number -- the worker exposure number, which is 50,000 nanograms per cubic meter. He compared this to reading taken in Idaho and other states and that such reading were in the 8 to 50 nanogram range. He said those numbers were just not high, nonetheless -- he said it is the mining companies' responsibility to address the mercury emissions problem. He concluded his remarks by asking the Commission to approve the regulations, noting that NDEP has shown considerable leadership through the entire rulemaking process.

Public Comment Section Closed

Vice Chairmen Coyner closed the public comment section and then asked the Commissioners for their thoughts about the regulations.

Commissioner Sponer asked Leo Drozdoff (NDEP Administrator) why the Commission should not table the regulation, given all the public comments presented at the meeting. Mr. Drozdoff noted that NDEP has been working on the regulations for more than a year. He said that many requirements in the regulation are a result of many meetings with both the industry and environmental groups. He did note that the last version of the regulation received from the Legislative Counsel Bureau was late, but that was not in NDEP's control. Nevertheless, he said the regulation that was made available on February 1st is for all practical purposes the regulation that was made available to the Commission and the public for today's meeting. Regarding fugitive emissions and ambient monitoring, Mr. Drozdoff said those issues were not incorporated into the regulation. The focus of the regulation remains on implementation of maximum achievable control technologies at the mercury emission source.

He did say that NDEP may well address fugitive emissions and ambient monitoring through a research program -- but he noted that would take time and is currently out of scope from the MAC concept now embodied in the current regulation.

Commissioner Henderson asked Mr. Drozdoff about the comments presented today in opposition to the regulation. He asked if any of these were new comments not addressed before by the Division. Mr. Drozdoff acknowledged that the cap and trade issue, more frequent testing, fugitive emissions and ambient monitoring had all come up during the regulatory consultation process.

Commissioner Crawforth then asked Mr. Drozdoff what the Division would do if we reject the regulations. Mr. Drozdoff said he would ask the industry to maintain pollution controls, but

because of other pressing matters at the agency, including strained staff resources, he would most likely be forced to table the regulations.

Commissioner Crawforth then asked what would happen if the regulations are approved and would NDEP come back to the Commission to revise the regulations in response to new emerging pollution control technologies and research (e.g., finding from future research about mercury in the environment, etc.). Mr. Drozdoff responded with an absolute yes, stating that he has consistently said in numerous public forums that the mercury regulations would be revisited to reflect significant new information that might improve the permitting program.

Commissioner Crawforth then made a statement that he came to the meeting with many questions and that he was not generally supportive of the regulations, but after hearing all of the testimony and presentations by staff he now supports the regulations.

Vic Chairman Coyner asked for any further questions. There being none, he posed a question of his own; he asked if the Commission approves the regulations then when would new reliable data on mercury reductions become available. Mr. Drozdoff responded by saying only when all of the precious metal mining facilities are subject to the new permitting program (i.e., authorized by the regulations) would data be available about mercury reductions. He said that would most likely be in 2009.

Vice Chairman Coyner then said he believed that if you want reductions in mercury emissions from precious metal mining operations, then you need to go to the source of the emissions and that's what this regulation proposed to do. He then said the Division is obligated to generate good reliable numbers on those reductions. Mr. Drozdoff concurred and then Vice Chairman Coyner asked for any further questions; there being none, he call for a motion.

SEC Motion – Commissioner Crawforth then made a motion to adopt regulation R189-05 Mercury air emission permitting program for precious metal mining facilities, noting that the amendments to the regulations presented by the Division at the meeting be adopted and that the typographical error found on page 10 of the regulations be corrected. Commissioner Dodgion seconded the motion. Vice Chairman Coyner called for further discussion whereupon Commissioner Dodgion offered a comment. He asked the Division to report back to the Commission at its next meeting in September on the 2005 data on mercury emissions. As well, he said the Commission might discuss the fugitive dust issue (mercury air emissions) and what future options might be available to address the issue.

Commissioner Henderson then made a statement thanking all the presenters and the Division for their testimony. He then suggested to the environmental groups that gave testimony today that they should get together with the Division to address unresolved issues such as ambient monitoring and fugitive mercury emissions. He further stated that the Division should consider a funding request in the next budget cycle to address any identified mercury research and monitoring needs. He also supported the mining industry's suggestion that mine rock waste piles might be a prime candidate for monitoring fugitive mercury emissions.

Next Commissioner Ricci said the Division needed to start somewhere in terms of regulating mercury emissions; he said he is confident with NDEP in getting the job done. He also acknowledged a letter from USEPA Region 9 that provided full support for the regulations.

Vice Chairman Coyner then requested that letters from the Great Salt Lake Keeper, USEPA Region 9, Parsons Behle & Laitimer, and the Mayor of Salt Lake City be included in the record. Commissioner Sponer then asked to clarify that at the next meeting that the Division should provide updates on the fugitive mercury issue, "a quantification of an acceptable mercury cap" and who was going to do monitoring (at the mine sites). She requested that these be discussion points at the next meeting.

Vice Chairman Coyner then requested a vote on the regulations. The vote was taken and was unanimous in favor. Vice Chairman Coyner adjourned the meeting at 5:30pm.

**Appendix 1 -- Agenda Item 1
Settlement Agreement Index**

APPENDIX 1 – SETTLEMENT AGREEMENTS INDEX

TAB NO.	NAME OF COMPANY	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
1	American Cement and Aggregate	NAC 445B.275 "Violations: Acts Constituting; Notice" – For numerous violations of a Stop Order and installing and operating un-permitted equipment.	1965 & 1966	\$135,000.00
2	Awesome Construction, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating without an Air Quality Operating Permit & Locating Screening Equipment onsite without first obtaining an Air Quality Operating Permit	1969	\$3,570.00
3	Bolling Construction, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice"-For failure to install and operate emission control equipment required in its Air Quality Operating Permit.	1965A & 1966A	\$7,750.00
4	Builders Choice, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice" – For commencing earthwork operations on 5 acres or more without first obtaining an Air Quality Operating Permit.	1996	\$2,400.00
5	Eagle Ridge at Genoa, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For commencing earthwork operations on 5 acres or more with out first obtaining an Air Quality Operating Permit.	1997	\$6,120.00
6	FNF Construction, Inc.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Failure to: 1) install and operate wet dust suppression controls on emission units associated with its aggregate operation, resulting in emissions of fugitive dust; 2) obtain a surface area disturbance permit; 3) obtain an operating permit for a lime marination silo; 4) employ proper procedures for filling the same lime silo, resulting in excess emissions; 5) contain, properly handle and dispose of fines	1967, 1968,1971, 1972, 1973 & 1974	\$35,460.00

		collected by the baghouse during operation of the asphalt plant, resulting in excess emissions; and 6) notify the DCNR/DEP/BAPC of excess emissions within 24 hours of their occurrence.		
8	Glamis Marigold Mining Co.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Exceedence of permitted emission limits for PM & PM-10 during source testing	1999 & 2000	\$1,200.00

SETTLEMENT AGREEMENTS INDEX

TAB NO.	NAME OF COMPANY	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
9	Hunewill Construction Co.	NAC 445B.275 "Violations: Acts Constituting; Notice" – Operating without adequate fugitive dust controls.	1984	\$1,890.00
10	James Hardie Building Products	NAC 445B.275 "Violations: Acts Constituting; Notice" – For : 1) failing to maintain records as required in AP3272-1410; 2) exceedences of permitted operating hours and material throughput rates; 3) exceeding maximum permitted emission limits; and, 4) failing to install the baghouse emission control required by AP3272-1410.	2004, 2005, 2006 & 2007	\$60,600.00
11	Mercer, Fraser, Inc	NAC 445B.275 "Violations: Acts Constituting; Notice" – For : (1) operating gravel emission units southeast of Beatty, Nevada without a Class II Air Quality permit, and, (2) constructing an asphalt batch plant southwest of Beatty, Nevada without a Class II Air Quality permit.	2008 & 2009	\$4,800.00
12	North Tahoe Investment Group	NAC 445B.275 "Violations: Acts Constituting; Notice" – For locating and operating mechanical screening equipment onsite without first obtaining an Air Quality Operating Permit	1983	\$600.00
13	River Park Properties, LLC	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating earthmoving equipment (disturbing 5 acres or more) without a valid Air Quality Operating Permit	1985	\$3,600.00

14	Vega Construction & Trucking	NAC 445B.275 "Violations: Acts Constituting; Notice" – For constructing a stationary source without applying for and receiving a modification of an Air Quality Operating Permit.	1977	\$1,200.00
15	Wendover Casinos, Inc. dba Rainbow Hotel Casino	NAC 445B.275 "Violations: Acts Constituting; Notice" – For operating a stationary source without an Air Quality Operating Permit.	1964	\$6,000.00

Appendix 2 -- Agenda Item III

Appointment of Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems

Recommended Action: NDEP is requesting the SEC to re-appoint the Advisory Board on Certification of Operators of Public Water Systems for a period of at least 2 years. During this time period NDEP is requesting the SEC to direct the Advisory Board to coordinate efforts with the advisory board for Waste Water Treatment Plant Operators and review potential opportunities for consolidation and improvement in both the water and wastewater certifications programs.

A list of the existing members and their bios, along with a proposed motion is presented below.

Background: The 2005 Nevada Legislature enacted SB 395, which among other things transferred certain responsibility for the operation of Nevada's safe drinking water programs from the State Health Division to NDEP.

Regarding the certification of operators of public water systems, SB 395 states that the "Commission may appoint an Advisory Board to act in an advisory capacity in matters relating to the certification of operators of community water systems." It is important to recognize that before the safe drinking water programs were transferred to NDEP, this Advisory Board reported to the State Board of Health. SB 395 now gives the SEC the option to continue, or not continue, the use of this Advisory Board.

Over the past two years this Advisory Board has worked on revising the regulation governing the certification of operators of public water systems (i.e., NAC 445A.617 through 445A.652). This revised regulation was adopted by the SEC at the October 2005 meeting. The adopted regulation requires increased skills and knowledge to operate public water systems for individuals certified by the Division as safe drinking water operators.

Since 1993 NDEP has maintained a similar advisory board to support the certification program for Waste Water Treatment Plant Operators, e.g., sewer plant operators. This activity is authorized under NRS 445A.425 (1) (e). This board provides advice directly to NDEP and not the SEC; however its functions are similar to those preformed by the Advisory Board for the Certification of Operators of Public Water Systems.

It's worth mentioning here that a recent survey by Farr West Engineering, consultants to NDEP, found that utilities that employ both drinking water and wastewater operators retain a 70 percent dual certification rate (i.e., 7 of 10 operators hold certifications in both functions). There may be an opportunity to coordinate these boards in the future.

Reason for Appointing the Advisory Board for Certification of Operators of Public Water Systems:

With the transfer of the safe drinking water programs to NDEP, NDEP has initiated an evaluation of the operator certification programs for both Public Water Systems and Wastewater systems. Differences between the two programs include issues such as fees and requirements for qualifying education, testing and continuing education. The NDEP will be examining these two programs over the coming year and with input from the two advisory boards will make recommendations for improvements to the programs.

In addition to this ongoing effort, existence of the Board provides NDEP a mechanism by which NDEP can routinely communicate with the regulated community. The Board has historically held quarterly meetings at which the Health Division and now NDEP are regular participants.

Once again, NDEP is requesting the SEC to reappoint the Advisory Board on Certification of Operators of Public Water Systems for a period of at least 2 years. During this time period NDEP is requesting the SEC to direct the Advisory Board to review potential opportunities for consolidation and improvement in both the drinking water and wastewater certifications programs.

Existing Advisory Board Members

- Darrin Price (Chairman), Sun Valley G.I.D.,
- Lynn Forsberg – Elko County
- Chet Auckly, S.E.E. Company LLC
- Cameron McKay (Secretary), Round Hill GID
- Marie Pollack (Vice Chair)
- Marcellus Jones, Las Vegas Valley Water District
- Harvey Johnson, Incline Village GID

Suggested Motion: Appoint an Advisory Board to the State Environmental Commission on Certification of Operators of Public Water Systems. The Advisory Board will consist of the above listed members who are appointed for a two-year term:

Membership Profiles

Advisory Board to the State Environmental Commission (SEC) on Certification of Operators of Public Water Systems

March 2006

Darrin Price (Advisory Board Chairman)

Darrin Price is the Public Works Director for the Sun Valley General Improvement District in Sun Valley a community located just north of Reno, Nevada. Darrin has over 20 years experience in the water and wastewater industry. Mr. Price is a certified Grade 4 Water Distribution Operator and a certified Backflow Specialist and Tester. He is currently finishing his Bachelors degree in Business Administration with a minor in Civil Engineering. Darrin is a member of the CA/NV

Management and Development Training committee and is currently chairman of its Advisory Board. Mr. Price has authored many articles for publication in trade magazines and given training to operators on both water distribution and cross-connection control.

Lynn Forsberg

Lynn attended Salt Lake Community College from 1976 until 1978 graduating with a certificate in construction management. He worked as a private contractor and a contract project manager until 1980 when he went to work for Park City, Utah as the Public Works Supervisor until 1981. Since that time he has lived in Wendover Utah where he was the Public Works Director until 1985 then West Wendover for Elko County as the Public Works Director until 1990. With the incorporation of the City of West Wendover Lynn went to work for Elko County, he started as the Public Works Supervisor and subsequently now is the Public Works Director.

Lynn has served on the Operators Certification Advisory Board since 1998 and has during his tenure been the secretary, chairman of vice, and chairman. He has enjoyed his association with other operators and board members. Lynn holds a wastewater grade 1 treatment plant operator certificate and water operator certificates as grade 3 distribution, grade 4 OIT Distribution, and grade 2 Treatment Plant Operator. He is the operator in charge for the Montello water and sewer system, the Jackpot water and sewer system, Lamoille water system, Jarbidge water treatment and distribution system, and advisor to Mountain City water system and wastewater disposal.

Chet Auckly

Chet Auckly is Director of Water Quality and Environmental Affairs for the California Water Service Company and President of S.E.E. Company, LLC. He has over 30 years as an Analytical/Biochemist, Microbiologist, Water Quality Manager, Researcher, Trainer/Educator, and Water Treatment Problem Solver.

Chet is a Registered Environmental Health Specialist in California and a Certified Grade IV Water Treatment Operator. Mr. Auckly holds an A.A. (Physical Science/Math), B.S. (Biology/Chemistry), M.S. (Environmental Engineering) and On-Going Post Graduate Studies in, Chemistry, Water Treatment and Business Administration and has both published and/or presented over 30 technical papers in the Water/Water Reclamation Field. Chet is the recipient of the George A. Elliott Memorial and the George Warren Fuller Memorial Awards of Excellence in the Water Field (California-Nevada Section American Water Works Association (AWWA) and International AWWA, respectively).

He is Past Chair of the California – Nevada Section AWWA. Chet is a recent past member of the Board of Directors, Past Chair of the Conference Management Committee, and Past Member of the Administrative and Policy Council of the International AWWA.

Cameron McKay (Advisory Board Secretary)

Cameron McKay began his career in the water industry after retiring from 20 years in the oil and gas industry, most of which was spent overseas. He has since spent 15 years in the water industry starting as an operator for Kingsbury General Improvement District before accepting his current position of District Manager at Round Hill General Improvement District.

Cameron currently holds a Grade 3 Water Treatment and a Grade 3 Water Distribution certificate as well as being a certified Backflow Tester and Specialist. Cameron is also the owner/ operator of Sierra Water Management, a company that operates a number of smaller water systems in the

Lake Tahoe and Northern Nevada areas. Very active in the water industry, McKay currently sits on the Water and Wastewater Training Coalition as well as being the secretary for the Operator Certification Advisory Board. He is also very active in training in both operations and operator safety.

Marcellus Jones

Marcellus Jones Jr. has 34 years of experience in the water industry. Mr. Jones has been with the Las Vegas Valley Water District for 17 years as the Distribution Systems Manager responsible for managing a 24-hour work force consisting of 9 supervisors and 83 employees responsible for maintaining approximately 3,542 miles of pipe over 300,000 service accounts, 59,000 valves, and other appurtenance to supply potable water for domestic and industrial use.

Before this Marcellus was with Los Angeles Department of Water and Power for 17 years. Mr. Jones holds a State of Nevada and California Grade III in Distribution. Marcellus received the George A. Elliott Memorial Award - AWWA-CA/NV in 2003. Marcellus has been a member of AWWA since 1987, CA/NV Competition Committee Chair, 1995- 2000, National Pipe Tapping Committee Chair 2002-2005, Tri-State Committee Chair 2004-2005 and the Assistant Conference Director for CA/NV AWWA 2004-2006.

Harvey Johnson

Harvey graduated from the University of Wisconsin (Superior) with a Bachelor's Degree in Chemistry. He joined the Incline Village General Improvement District (IVGID) in 1977 as a Chemist. As a chemist, he was responsible for analyzing the water and wastewater systems as well as other operational duties. He held the positions at IVGID of Assistant Superintendent, Operations Manager and most recently Utilities Superintendent. He is certified as a Wastewater Treatment Plant Operator IV; Water Treatment Operator Grade T2, Mechanical Technologist Grade II. Harvey also holds a certificate of Public Management from the University of Reno, Nevada.

Appendix III - Agenda Item IV

Exhibit 2

March 8, 2006

Proposed Nevada Mercury Air Emissions Control Program

Summary of Written Comments NDEP Received by 8:00am, March 7, 2006

Comments the Division received and has compiled below were from a number of sources including: the regulatory workshops held in Carson City on December 15, 2005 and Elko on December 19, 2005; letters received by US mail; and e-mail comments. This document reflects a compilation of comments received. Comments that were similar in scope were consolidated for brevity. Comment counts identified with a "~" are approximate.

Comment #1: Request to add annual reporting of mercury co-product.

Comment Count: ~95

NDEP Response: The draft regulations were amended to address this comment. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “mercury co-product” in Section 6. The requirement for annual co-product reporting is contained in numerous Sections; including, Sections 33, 34, 36 and 39.

Comment #2: Request to add a 15-day time limit to the period an applicant has to resubmit an application that the NDEP deems incomplete.

Comment Count: 1

NDEP Response: A requirement was added to the draft regulation that states, “If an incomplete application is returned to the applicant, the applicant must resubmit a complete application within 15 days after the applicant receives the returned incomplete application”. The provision applies to both Phase 1 and Phase 2 applications covering either Tier 1 or Tier 2 thermal units. The language can be read in the March 3, 2006, LCB File No.R189-05, at Section 35.

Comment #3: The tiered regulatory system doesn't thoroughly identify which mines will be considered for each tier and Tier 1 mines were not fully specified.

Comment Count: 1

NDEP Response: The listing of Tier 1 thermal units first became available as Appendix A in NDEP's November 17, 2005 posting of the Proposed Nevada Mercury Air Emissions Control Program summary document. The regulation-format listing of Tier 1 thermal units then became available in the January posting of the Agency Draft regulation, followed by the February 1, 2006 Agency Draft provided to the public in advance of the March 8, 2006 State Environmental Commission hearing. The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of “Tier-1 thermal unit that emits mercury” in Section 19. The formal identification of units is in Section 23.

Both the draft regulations and the Proposed Nevada Mercury Air Emissions Control Program (NMCP) summary document discuss the process for NDEP to designate units as Tier 1, Tier 2 or Tier 3. Tier 1 units were designated as a result of their involvement in the former Voluntary Mercury Reduction Program. Initially, all other units will be designated as Tier 2 (regardless of whether they are located at a VMRP participating facility or not). Tier 3 units may be determined as a result of the de minimis determination process. To aid in this determination, over 50 mining companies received and are required to complete the NDEP's “Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)”. The deadline for submittal is March 20, 2006.

Comment #4: De minimis Determination: The definition is vague and allows for changes without an objective basis. A numerical minimum definition of de minimis should be incorporated into the regulations. The proposed process is too subjective and should include objective criteria such as ore concentration or process fluid concentration. The cumulative total for a facility should be no more than 16 ounces per year. The section should strengthen the required testing and reporting for any source that has de minimis status.

Comment Count: 8

NDEP Response: During development of the program, it was realized that there may be type(s) of thermal unit(s) that could emit such a small amount of mercury that the construction of a control device is not feasible. One example commonly used for discussion purposes is a laboratory assay hood.

The NDEP was reluctant to set an arbitrary de minimis threshold without supporting data. To aid the Director in this determination, over 50 mining companies received and are required to complete the NDEP's "Precious Metals Mining Mercury Air Emissions Questionnaire (for Nevada Facilities)". The deadline for submittal is March 20, 2006. The results of the questionnaire are intended to provide the NDEP with information necessary to determine if such a threshold can be set. The regulations also provide for a company to petition the Director for an initial de minimis determination that emissions from a thermal unit are de minimis emissions. In either case, the Director shall make such initial determinations publicly available for review and comment. As a component of this initial determination, the NDEP is allowed to factor in to the decision process whether multiple de minimis units at a single facility will be allowed, and if so, at what level of combined mercury emissions. The draft regulations provide for a public process in setting such a de minimis emissions threshold.

The March 3, 2006, LCB File No.R189-05, version of the draft regulations contains the definition of "De minimis mercury emissions" in Section 3. The public process defined for evaluating and setting a de minimis is contained in Section 25.

Comment #5: Annual Self Monitoring/Stack Testing: Annual self-monitoring is too infrequent and insufficient to protect human health and the environment. The requirement should be changed from annual to monthly.

Comment Count: 3

NDEP Response: Annual source testing is adequate to demonstrate that the mercury controls are operating efficiently and will provide sufficient information to support a demonstration of compliance with an emissions limitation. It is not uncommon to have an even longer interval between tests. Based on decades of experience in evaluating pollution control devices and reviewing emissions testing from emissions controls, and the inherent gas stream design range of the current mercury emissions controls, the NDEP does not believe that significant changes in emissions will occur. Additionally, the NDEP does not believe that more frequent testing will result in any additional environmental benefit.

Comment #6: Request to add speciated stack testing requirements to the regulations for the testing that Tier 1 units have started. The sources need more time to complete the testing.

Comment Count: 2

NDEP Response: The Voluntary Mercury Reduction Program (VMRP) companies are already at various stages in the process of developing testing protocols and conducting speciated testing of existing thermal units. This work will be done by the end of the calendar year.

Comment #7: Presumptive Nevada MACT: Presuming that a piece of control equipment performs as MACT merely because the equipment was installed under the former VMRP is inappropriate. ... The 'presumptive MACT' inappropriately allows existing VMRP companies to operate 'as-is' with no requirement for additional mercury emissions reductions. Existing facilities should undergo timely review to identify and implement additional measures. NDEP's proposed program would allow these mines to get a "presumptive MACT" or essentially permit the mine as-is. Presumptive NvMACT should be eliminated.

Comment Count: ~96

NDEP Response: These comments reflect a general misunderstanding of the NDEP's use of presumptive NvMACT. The purpose of identifying current control devices as presumptive NvMACT is to ensure the continued implementation of controls that have been operating under the previous Voluntary Mercury Control Program. Phase 2 of the program requires evaluation of all units and the installation of maximum achievable control technology. The NvMACT may result in the requirement for additional or updated controls at any facility including those originally identified as Presumptive NvMACT.

Comment #8: Fugitive Mercury Emissions: The program needs to go farther in addressing fugitive emissions. There is strong reason to believe that emissions coming from waste rock and dust at gold mining operations are a significant source of mercury pollution. The draft rule fails to incorporate emissions control or monitoring of fugitive dust.

Comment Count: ~100

NDEP Response: Currently there is no approved method for determining mercury from fugitive emissions. While not part of this proposed program, the NDEP understands that fugitive emissions will be studied. The NDEP has been working with industry and other interested parties on fugitive emissions research. The precious metal mining companies are providing funding for further research in Northern Nevada on point sources, fugitive sources and natural sources of mercury emissions.

Comment #9: Continuous Emissions Monitors (CEMs): CEMs should be part of the program as necessary and appropriate to ensure controls are working and to ensure accountability. As the NMCP matures and emissions limits are developed in Phase II, NDEP should consider if it is appropriate to require CEMs. About two thirds of the coal fired electric generating units in the US will be required to monitor their mercury emissions in 2008...should be technically feasible at precious metal mines.

Counter comment: NDEP needs to weigh the need for CEMs against the current state of technology and consider that it is not currently available.

Comment Count: 12

NDEP Response: The program requires monitoring methods adequate to demonstrate that the mercury controls are operating efficiently and provide sufficient information to support a demonstration of compliance with an emissions limitation. The draft regulations do not prohibit an evaluation of the methods used to demonstrate compliance, including the use of CEMs. However, at this time, the technology for mercury CEMs continues to evolve and is driven by the coal fired electric generating units in the U.S. that will be required to monitor their mercury emissions. The technology is in an alpha, or at best a

beta, development stage and is not yet available for the processes regulated under this program.

**Comment #10: Adequate Ambient Air Monitoring:
Comment Count: ~98**

NDEP Response: Ambient monitoring is typically required to protect against an ambient standard. EPA has not established an ambient standard for mercury. This proposed program requires mercury controls on applicable mercury sources. The NDEP believes that the protection provided under this program would be greater than one that is based on an ambient standard. Utilizing an ambient standard would not guarantee that controls would be required on all mercury sources.

**Comment #11: Public Health Criteria and Residual Risk Evaluations:
Comment Count: ~90**

NDEP Response: To understand the requirements, you need to start at 1970, when Congress enacted Section 112 of the Clean Air Act. This statute was the first time that Congress focused its efforts on reducing hazardous air pollutants (HAPs). The statutes at that time defined HAPs as pollutants that, in the judgment of the EPA Administrator, cause or contribute to air pollution which may increase mortality or have an increase in serious irreversible illness. Section 112 required EPA to publish a list of each HAP that EPA intended to establish an emissions limitation for, and then promulgate a standard, or otherwise explain why the HAP was not hazardous. To do this, EPA utilized a risk-based analysis to set the emissions standards. EPA considered levels of HAPs at which health effects were observed, and factored in an ample margin of safety to protect public health, and set the standard accordingly.

Between 1970 and 1990, EPA only listed 8 HAPs and set standards for only 7 of them. Clearly, the risk-based approach did not work. Congress was provided information that concluded that the program was not effective. Subsequently, Congress passed the 1990 Clean Air Act Amendments with an emphasis on strengthening and expanding the HAP program through an emissions control technology-based approach. Today, the technology-based approach requires emissions control to levels that utilize the best available control technology.

There were two significant changes made to Section 112 in the 1990 reauthorization. First, rather than the EPA Administrator listing HAPs, as was done previously, Congress established the list of 189 HAPs on their own (see 7412(b)). Second, an emissions standards implementation process was formed and is based on the maximum reduction in emissions which can be achieved by applying the best available control technology.

This technology-based approach consists of a two-step process for determining emissions standards under the 1990 Act Amendments. First, EPA is required to establish technology-based emissions standards for categories of sources that emit HAPs. That is the maximum achievable control technology is required to apply to each category. This requires all sources in a category to at least cleanup emissions to the level their best performing peers have shown can be achieved. This is strictly a technology review and contains no risk-based assessment.

Comment #12: Reduction Goals and Emission Caps: Does the proposed NMCP have emission reduction goals similar to the former voluntary (VMRP) program? What further reductions do you expect? The program should provide for overall emissions reductions. Reductions achieved by other industries should be used as a benchmark, such as medical waste incinerators. The program should establish a cap on total annual mercury emissions.

Counter comment: Given the success of the VMRP, are regulations really necessary?

Comment Count: 8

NDEP Response: The Voluntary Mercury Reduction Program (VMRP) was designed to address the most significant sources of mercury air emissions and utilized EPA's successful 33/50 program as its foundation. According to the US EPA, the four VMRP companies comprised more than 90 percent of reported mercury air emissions in Region 9 in 2000, and the companies have since reduced their emissions by more than 80%. This meets or exceeds most of the goals or caps set by other states for other industry sectors.

There is no basis for establishing a cap and when doing so, there is no guarantee that controls will be required on all units to achieve the cap. In the proposed NMCP best available controls are required on all applicable units.

Comment #13: Will the state mercury permit roll up into the Title V program for affected facilities?

Comment Count: 1

NDEP Response: Yes.

Comment #14: Early Reduction Credit: This section should be deleted. Sources should not operate with emissions above a MACT level at any time.

Comment Count: 2

NDEP Response: The establishment of the Early Reduction Credit program is designed to create an incentive for companies with currently un-controlled or minimally controlled units to reduce emissions in advance of the NvMACT. Early Reduction Credit is based on a rigorous evaluation to determine the best controls available at the time the request is made.

Comment #15: Mercury Control Timeline. The program must be accelerated to realize improvements in mercury control sooner. We can hope that companies will adopt controls on the early reduction track, but NvMACT will not be required until 3 to 4 years from now. This delay is unreasonable considering the serious public health risk.

Comment Count: ~98

NDEP Response: The most significant sources of mercury are the VMRP facilities and they are already controlled. The timelines in the NMCP for implementing additional controls are much more aggressive than any timelines for implementing a federal MACT, and for the implementation allowed for power plants in the most recent CAMR rule. These timelines have been developed based on our ability to adequately evaluate the control

measures to establish appropriate conditions in the mercury permits, and to fulfill our public comment requirements.

Comment #16: All public comment periods in the regulations should be set at a minimum of 60 days and include public hearings to provide adequate time for public examination.

Comment Count: 1

NDEP Response: This program includes various points in the process where the Director is making a determination or permits are being processed and public input will be solicited. The proposed regulations are consistent with standard 30-day comment period for all other permit actions and NDEP programs.

Comment #17: Regulation Development Process: The public process for this program and regulation development is complex and flawed. The public comment process was unreasonable; the Elko meeting was cancelled and rescheduled with limited notice that did not permit everyone's attendance. The regulations continued to evolve from draft versions and the [originally proposed timeframe of a] January hearing should be postponed. The timeframe for submitting comments was far too short for such an important issue and therefore an extension of the public process is requested.

Comment Count: 5

NDEP Response: The regulations only require one workshop and the Carson City workshop met that requirement. Postponement of the Elko workshop was unfortunate and due to circumstances beyond the Division's control. The meeting in Elko was rescheduled a week later to provide an opportunity for additional comment.

The Agency draft regulations were posted and noticed to the public on February 1, 2006, which was more than 30 days in advance of the scheduled March 8, 2006 State Environmental Commission hearing as required by the APA. The submittal made on February 1st contains the same program as the LCB version recently provided, with a few errors introduced by LCB that will be corrected at the Commission hearing. The version that will be proposed at the hearing is the same as the February 1st version.

Comment #18: Tier 3 thermal units should not be grandfathered into the regulation. Tier 3 thermal units should be held to the same mercury emission standards, rules, applications, monitoring and Tier 1 and Tier 2 thermal units and not have a lower or lesser standard applied to their operation, maintenance or modification. Modification of a Tier 3 thermal unit should be considered as construction of a thermal unit, and not given more lenient consideration than Tier 1 and Tier 2 thermal units.

Comment Count: 1

NDEP Response: According to the proposed regulations, a Tier 3 thermal unit is one that either doesn't have the potential to emit mercury (i.e. zero emissions of mercury) or one that emits at or below de minimis mercury emission levels. The de minimis approval process allows the Director to consider the level of mercury emission or type of unit that doesn't warrant further evaluation of additional controls, permitting and monitoring. Any Tier 3 thermal unit that proposes a modification will be evaluated to determine if any of the mercury requirements would be applicable. In addition, all Tier 3 units are required to certify annually of the units continued status.

Comment #19: Section 35, item 6(a) should not allow the applicant to determine what is deemed sufficient to determine what is to be NvMACT. This set up a self approval and self regulatory program and does not protect the public or public trust resources.

Comment Count: 1

NDEP Response: The proposed regulations require an applicant to propose what they believe is NvMACT as part of the application. The Director (i.e. NDEP) reviews, evaluates and determines the NvMACT based on the information provided by the applicant and any other information available to the Director. Section 35.6(a), however, discusses only the requirement for the Director to make public and receive comment on his proposed NvMACT determination. The program is most decidedly not a self approval and self regulatory program.

Comment #20: General oppositions to adoption: The control of emissions is supported, but the final draft of the regulations still need considerable work to suitably protect public health, public trust resources, fish and wildlife. The proposed program is substantially flawed because NDEP has not conducted a rigorous public health risk assessment so there is not means of determining if it is sufficient.

Comment Count: 2

Counter Comment: The need for action is urgent and should not be delayed. We urge you to adopt rules for mercury reduction that will make sure that the State of Nevada will not allow our native lands to be contaminated further by mercury pollution. We greatly appreciate your efforts to protect the public and environmental health from mercury emissions. The NDEP has shown great leadership in developing the regulations and the new program should be recognized as a significant first step.

Comment Count: 4

NDEP Response: Based on all of the information available to the NDEP, we believe that the most appropriate course of action at this point in time is to continue to require efficient operation of existing mercury controls and to require the installation and operation of the best available controls on all thermal mercury emitting units. This approach will ensure the most rapid reductions of mercury while additional information is gathered and studies are conducted.

Comment #21: Mass Balance

Comment Count: 10

NDEP Response: Because of the large quantities of ore that are processed and the relatively small concentrations of mercury present in the ore, it is not reasonably possible to account for mercury associated with the mineral processing activities with any relative accuracy and certainty. Attempting to do so with large thermal processing units would result in inaccurate information. A more representative way to account for mercury emission to the atmosphere is to perform direct emissions testing.