STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of September 6, 2006

Dept. of Wildlife Building
1100 Valley Road, Reno, Nevada

Members Present:
Alan Coyner, Vice Chairman
Pete Anderson
Lewis Dodgion
Don Henderson
Doug Hunt
Ira Rackley
Harry Shull
M. Frances Sponer
Tracy Taylor

Members Absent:
Melvin Close, Chairman
Stephanne Zimmerman

SEC Staff Present:
David Newton, Dep. Attrny. General
John Walker, Executive Secretary
Robert Pearson, Recording Sectry.

(Commission Vice Chairman Alan Coyner served as Chairman of the meeting and is hereafter referred to as 'Chairman Coyner.')

Chairman Coyner called the meeting to order at 9:30 a.m. and noted that the meeting had been noticed correctly. He acknowledged the long service of former Commissioners Hugh Ricci and Terry Crawforth, stating that they had both done a great job for the Commission and wishing them well in their retirements. He noted the absence of Commission Chairman Mel Close, whose wife had had surgery on the previous day, and wished for a speedy recovery for her. He welcomed the two new Commissioners, Tracy Taylor the new State Engineer, replacing Hugh Ricci, and Doug Hunt, Acting Director for Dept. of Wildlife, replacing Terry Crawforth. He also welcomed Robert Pearson as the new SEC Recording Secretary, replacing Nan Paulson, and thanked Ms. Paulson for her service.

Chairman Coyner noted that the Commission would be considering the Agenda Items for Settlement Agreements for Air Quality Violations and Arsenic Rule Exemptions by consent, unless there was someone present to specifically address one of the items, in which case that item would be considered separately. He emphasized that the Arsenic Rule Exemptions would only address that particular subject and that any other water system matters were outside of the purview of the Commission.

He noted that Regulatory Petition R179-05, Waste Landfill Cover Requirements (Item 4 on the petition list), was being pulled from the agenda and would not be taken up at this meeting.

I. Approval of Minutes from the March 8, 2006 SEC Meeting

Chairman Coyner moved to Agenda Item I, and asked for approval of the minutes of the March 8, 2006 SEC meeting.

Motion - Commissioner Henderson moved to approve the minutes, and Commissioner Rackley seconded. Commissioner Sponer noted a typographical error on page 3, paragraph 5, line 2. Commissioner Shull stated that he would abstain from voting on the motion as he was not present at the March 8 meeting. There was no further discussion, so Chairman Coyner called for a vote to approve the minutes of the March 8, 2006 SEC meeting. The vote was unanimous in favor, with Commissioner Shull abstaining.

Chairman Coyner indicated that before moving to the next Agenda Item, Settlement Agreements, he would like to have Leo Drozdoff, Administrator of the Nevada Division of Environmental Protection (NDEP), speak to the Commission.

Administrator Drozdoff stated that for the benefit of the new members of the Commission, as well as the audience, he would like to outline how NDEP functions in relation to the Commission and the issues before it today. Much of what NDEP does comes from Federal statutes and regulations—the Clean Water and Clean Air Acts, Safe Drinking Water, etc. and what Nevada has is known as delegation or primacy, in some cases, that allows the state to run these programs. So the Commission would be hearing presentations on regulations relating to those today, including Clean Air provisions, Clean Water provisions, and Safe Drinking Water provisions with regard to the Arsenic Exemptions.

Nevada also has state standalone programs that have been developed over the years to address state-specific needs, and the Commission would be hearing from some of those today, including the Groundwater Protection Program, Mining Program and Chemical Accident Prevention Program that is part of the Air Program.

Administrator Drozdoff noted that there were some new faces from NDEP before the Commission for this meeting. The March meeting was the last for Michael Yamada (Air Pollution Control) and Acting Branch Chief Larry Kennedy would present those petitions. Administrator Drozdoff said that he and Deputy Administrators Tom Porta and Colleen Cripps would all be available for the rest of the meeting to answer any questions that might arise.

II. Air Quality Violations Settlement Agreements

Chairman Coyner announced that the Commission would take up the Air Quality Settlement Agreements and asked if anyone present was going to address the

Settlement Agreements. Seeing none, he said that the Commission would hear the list of settlements as a Consent Calendar.

Mike Elges, Chief of the Bureau of Air Pollution Control for NDEP, introduced Larry Kennedy, acting Compliance and Enforcement Branch Supervisor, as the person who would present the Settlement Agreements. He said that Mr. Kennedy had been with the Air Program since March 2004 and had a diverse background including experience in mining exploration geology. He noted that if questions arose about issues that predated Mr. Kennedy's time with the agency he (Mr. Elges) would be available to provide that information.

(BEGIN PREPARED REMARKS ON AIR QUALITY SETTLEMENTS BY LARRY KENNEDY)

Mr. Chairman, members of the Commission, good morning. For the record, my name is Larry Kennedy. I'm serving as the Acting Supervisor of the Compliance & Enforcement Branch in the NDEP's Bureau of Air Pollution Control.

I know that (the members of) the Commission became very familiar with Mike Yamada during his 5 years as supervisor of the Compliance & Enforcement Branch. Shortly after the Commission's last meeting, Mike took personal leave and retired a short time later. I had the pleasure of working with Mike for over a year and a half. All of us at the combined Air bureaus learned a lot from Mike.

As Mike Elges said, I have been with the Bureau of Air Pollution Control since March of 2004. I initially worked mainly in the Permitting Branch, but joined the Compliance & Enforcement Branch on a full-time basis later that year. Prior to my joining the Bureau, I worked for over 20 years as a mineral exploration geologist, most recently for Battle Mountain Gold Company. My family and I have made Nevada our home since 1993.

Before considering the settlement agreements listed on the agenda, I would like to mention one item that we had planned to put before the Commission today. At the March meeting, Mike Yamada told the Commission that he planned on providing for your comments a revised penalty matrix, (which is) the main tool that we use to assess penalties for air quality violations for your comments. Unfortunately, because of staff turnover – including the departure of Mike and another inspector a few months ago – we did not have sufficient staff to complete the task for this meeting. Several of us in the Compliance & Enforcement Branch worked with Mike on this project. We hope to present a revised penalty matrix for your comments at the next meeting of the Commission.

I would like to make one correction to the agenda before you. The settlement agreement for Diamond Hot Springs Estates, item number 13 on the calendar, is not being presented today. We did not receive the paperwork in time. Also, you may have noticed that the copies of the settlements in your packages for Nevada

Cement Company and Road & Highway Builders, items number 8 and 10 on the calendar, are not signed. We did obtain the necessary signatures for these settlements, however, and they will be discussed today.

This morning I will discuss settlements of major air quality violations that the Compliance & Enforcement Branch has negotiated during the past six months or so. Based on a long-standing agreement, the Branch negotiates these settlements on your behalf - on the behalf of the Commission. We have tried to take the same (even-handed) approach to Compliance issues and Enforcement actions that we think Mike would have taken. We understand that the Commission must be assured that the settlements are fair. We have informed all of the companies or individuals listed on today's agenda that we act as Commission's agent in assessing penalties and negotiating settlements, and that the Commission may see fit to adjust a penalty that we have assessed.

What I would like to do today is

- to discuss each of the settlement agreements,
- to answer any questions that you might have, and
- to listen to any guidance that you have to offer.

Some of the violations and related settlement agreements are fairly simple or straightforward, but others are more complex and may require more discussion. Mr. Vice Chairman, I understand that you would first like me to discuss all of the settlements before the Commission considers them for ratification?

(The details of each settlement agreement, with Mr. Kennedy's comments, are contained in Appendix 1.)

(END OF PREPARED REMARKS)

Commissioner Anderson asked Mr. Kennedy what his outreach and educational opportunities were for new contractors, as the state is developing rapidly. Mr. Kennedy replied that there is a program that restarted in June of this year. The focus of this program is surface area disturbance permits, which he noted were the subject of a number of the violations before the Commission, and are one of the biggest current problems. In previous years aggregate operators and small construction groups were targeted more for outreach. Mike Elges added that a minimum of once a year they try to do some training that primarily focuses on fugitive dust but does touch on aspects of required permits. In past years they have done a number of seminars on permits. They have been working to rekindle these due to the growth of construction in the state.

Commissioner Sponer noted that none of the violations were in Clark County and asked if the county was in NDEP's jurisdiction. Mr. Kennedy indicated that it was not, as Washoe and Clark Counties have populations of over 100,000 and thus by statute are responsible for their own health programs, and the air programs come out of that requirement. So with the exception of fossil fuel steam

generating power plants, air quality is regulated by those counties. Commissioner Sponer followed up by asking if there was a separate board that they (Washoe and Clark counties) report to? Mr. Kennedy said that the state had delegated the authority, but still has an oversight role. Commissioner Sponer asked if that was the Clark County Commission? Mr. Kennedy affirmed that the County Commission was delegated authority and they had people working on the oversight. Commissioner Sponer asked if that meant the SEC does not get the reports on Clark and Washoe Counties, even though we have oversight? Mr. Kennedy said no, but we (NDEP) have been briefed in the past by both counties when there were questions.

Commissioner Henderson said that he understood that all the settlement agreements had now been signed by the violators, and it was confirmed that this was correct.

Commissioner Dodgion noted that in the three violations for disturbing five acres or more penalties ranged from $600 to $5100 and asked for an explanation. Mr. Kennedy said that, with Mr. Elges, they had established a minimum fine of $3000 for operating without a surface area disturbance permit. In the case of Builder's Choice, there were extenuating circumstances in that the violation was discovered on the first day that the source was operating, and that the source believed that, based on statements by county officials, he could operate the day after the permit had been applied for. So that's why a penalty of $600 was agreed. In the case of Nevada Land and Ranches, they had been operating for 10 weeks and based on $600 per week, minus a credit for having their air pollution control equipment on the site, $5100 was agreed. He said that he would like to address this in a revised penalty matrix. Right now there is not a set penalty for operating without a permit. Commissioner Dodgion said he looked forward to seeing the revised matrix.

Chairman Coyner noted that the matrix has been a subject of ongoing discussion since he had been a commissioner. He asked Mr. Kennedy to explain for the benefit of the two new commissioners and the public where the money goes. Mr. Kennedy said that all of the monies collected go to the local school district in the county where the violation occurred.

When there were no further questions, Chairman Coyner stated that he would entertain a motion, in reference to the items 1 through 12 on the agenda rather than reading the list of individual NOAVs.

Motion - Commissioner Sponer moved that the Commission approve the settlement agreements for the consent calendar, items 1 through 12; the motion was seconded by Commissioner Dodgion. When there was no further discussion, the vote was unanimous in favor.

III. Arsenic Rule Exemptions

Chairman Coyner announced that he would move down the agenda to Item III, Arsenic Rule Exemptions.

Doug Zimmerman, Chief of the Bureau of Safe Drinking Water, presented the Arsenic Rule Exemptions. He noted that there were representatives in attendance from approximately ten of the water systems on the list, who were available in case any questions about their specific systems arose.

Mr. Zimmerman then gave a presentation on NDEP's recommendation to approve the exemptions listed under Agenda Item III.

(BEGIN PREPARED REMARKS ON ARSENIC RULE EXEMPTIONS BY DOUG ZIMMERMAN)

Introduction – Change in the Standard
We're here to talk about the new arsenic standards that were put in place January 23, 2006. Of note, In 1942 the Public Health Service established 50 ppb (parts per billion) as the arsenic standard for drinking water.

The new standard of 10 ppb was adopted by EPA and became law in 2001, but the Safe Drinking Water Act (SWDA) allows a period of five years until the standard becomes effective.

As way of background, on January 23, 2006 the new EPA standard of 10 ppb became effective. As you may remember, just about a year ago on October 4, 2005 I presented the Commission with a series of regulation packages which included the new arsenic standard. So the State of Nevada has now adopted the standard of 10, and we are implementing that, with NDEP as the lead primacy agency.

Significant activities over the last year: In October 2005 we thought we would have about 130 systems that would have to deal with the arsenic issue. Today, September 2006, that number has dropped to about 80 systems due to: treatment online (20); treatment soon (8); and consolidation (i.e., systems closed became part of larger system; system restructuring – systems that may have had just one source that violated the standard [and because of the flexibility in the system they were able to close a particular source] so they no longer need to apply for an exemption or look at treatment options.

Financial aspects: Again it's been a busy time over the last year. We have a Drinking Water State Revolving Fund (SRF) and that fund has obligated approximately $20 million over the last two years. The SRF program will be one of the main financial resources systems can go to.

NDEP staff: One full-time staff person has now been assigned to work on arsenic issues at NDEP. To date we've reviewed all 62 exemption applications and are proposing 36 of the applications for approval today. Twenty-six of the applications needed more work and that information is coming in, so there will be another package presented to SEC in the future.

I am using two handouts to support my presentation today.

Handout #1 – EPA - Exemption Quick Reference Guide: This handout acknowledges that this is a federal program that NDEP implements as the State's primacy agency. Our exemption language matches federal language directly from the Safe Drinking Water Act. It is key to remember that an exemption is an extension to allow systems additional time to build capacity in order to achieve compliance. The process is set forth in the federal safe drinking water act and in our state regulations. Additional time is also necessary to obtain financial support to analyze compliance options and select a cost effective treatment technology.

Handout # 2: This handout lists existing systems in Nevada with arsenic greater than 10 but less than 50 ppb. New systems or new sources at existing systems must meet the standard of 10 ppb. How many people being served comes into play, since small systems serving less than 3300 people can apply for up to three two-year exemptions, which would take them out to 2015.

Source Issue/Examples

Within a system that has applied for an exemption, not every source/well exceeds the new standard. Carson City has about 15 wells and 2 or 3 exceed the standard. They did not use those wells this year, Gardnerville Ranchos GID has 6 wells, only one exceeds the arsenic standard. They did not use that well until August of this year.

What did a system have to do to be eligible for an exemption?

Submit an application to NDEP explaining the technical and financial reasons why they could not comply. NDEP received and reviewed all 62 applications. We are recommending 36 for approval and are working with the 26 systems whose applications were deficient. Additionally, the financial aspects of the applications were reviewed by Farr West engineering who is under contract with the SRF.

Draft Exemption

Looking in your packets at the Draft Exemption, the first section is Findings of Fact, with three items listed. The systems' applications had to address the first and third items – specific technical and financial reasons why they need

additional time to comply. That is a determination the Division and the Commission makes, and not the water systems themselves.

For these 36 systems we found their applications were complete. The systems by statute were required to provide notice to their customers of their intent to seek an exemption and of the date, time and location of this hearing.

We received comments from customers of three water systems – we received 14 letters from customers of the Spring Creek systems (there are two separate systems, but geographically they're right next to each other) and one letter from a Carson City customer (the letters were actually submitted directly to SEC Executive Secretary John Walker). Broadly summarizing their comments they all were opposed and said arsenic is a poison we don't want it in our water, three years is to long and for the Spring Creek customers located near Elko that a hearing in Reno was inadequate. John Walker did respond to all these individuals with an informational letter that explained that the hearing was for systems across the state and giving some details on the process similar to what you're hearing today.

Returning to item #2 in the Findings of Fact – granting of the exemption will not pose an unreasonable risk to public health during the exemption period.

I will describe to you what NDEP considered in reaching that conclusion and also a little later I will describe to you the alternative if the exemptions are not approved. EPA leaves the determination of URTH to the states – and I will tell you right now there is no easy straightforward answer – the data and science do not exist to be able to say 10 is ok, 17 maybe but 35 is bad. There are too many variables, too little data, too much uncertainty in what we do know to be able to reach those types of conclusions. The law allows for exemptions for systems that have concentrations greater than 10 but less than 50. When EPA put in place the new standard of 10 that standard did not represent a level of zero risk – at a level of 10 a certain number of people will still get lung and bladder cancer that may be associated with arsenic. So again the threshold we are looking at is unreasonable risk. It's certainly not zero risk and it's not increased risk; it's really "When does the increased risk above 10 become unreasonable?"

In setting a standard EPA by law has to look at and consider the technical and financial feasibility of implementing a standard at a given level. The standard of 10 is practical level, not a zero risk level. Throughout the process of setting a standard EPA has to make assumptions and extrapolation from the available data. These are referred to as uncertainty factors or safety factors; so for example extrapolating data from animal lab tests to human beings you apply a certain uncertainty factor, it may be 10 or 100, and you do that for all the information that is available so you have many safety factors by the time you reach a final standard. What this is reflecting is that we as a society do not run

controlled experiments on human beings where we feed them arsenic and see what the response is, so we have uncertainty/safety factors.

Another important concept to consider here is that of acute and chronic contaminates. Arsenic is considered a chronic contaminate which means it is a life time of exposure that is considered in establishing the standard. Assumptions are made that the person weighs 70 kilograms (154 lbs) and consumes 2 liters of water every day for their entire life.

So with that background on what represents an unreasonable risk, it's very important to focus on the specifics language of the Safe Drinking Water Act (SDWA) – to deny these applications we would need to find an unreasonable risk , not an increased risk, during this three-year period.

Here are the things we considered:

1) The old standard of 50 ppb was in place for 64 years, and while the new standard of 10 ppb reduces risk it's a practical level and not a zero risk level;
2) The standard of 10 was put into 2001 not effective for five years;
3) The law allows for exemptions for systems with concentrations less than 50;
4) Dealing with a chronic contaminate – a life time of exposure at 2 liters a day ; and
5) Board of Health precedence – Fernley and Fallon

So those are the things we considered in our recommendation to you of why we feel, at the concentrations you see, for a three-year period these concentrations do not represent an unreasonable risk.

An exemption granted by the SEC must, by law, include a compliance schedule that will result in the system achieving compliance with the new standard by 1/23/09 – three years from the date the standard became effective. In the Decision section of the exemption (page 2) you will see that compliance schedule. It requires the system to obtain financial assistance by 7/23/07, complete an evaluation of compliance alternatives by 1/23/08 and finally implement the alternative by 1/23/09, which will result in water meeting the standard. This is an enforceable compliance schedule - Nevada statutes specifically provide for civil and administrative penalties of $7,500/day for failure to comply with the conditions imposed by the Commission in granting an exemption.

The last statement you see in the exemption is that systems serving less than 3,300 people can apply for an extension to the exemption. The SDWA allows up to three two-year extension for small systems. We have qualified the ability to obtain an extension saying that a system must make significant progress during this three-year period. Significant progress is going to be a judgment call and will

be measured against the specific challenges each of these small systems will face. One of the factors I see coming into play will be the arsenic concentration at a given system and I think we will be revisiting the concept of risk – in general, systems with higher concentrations should be making more progress.

The last thing I wanted to touch on was alternatives: If the exemptions are not approved what will NDEP do? We will require compliance with the new standard and we will do it through individual enforcement actions in which we find the system in violation and enter into a compliance agreement with the system to meet the standard. That process will take more of our limited staff resources and will likely take more time, but it would be a high priority. It's likely that that path would lead to longer time frames for achieving compliance because of the amount of effort we would have to put in and the number we could address at one time.

I would be happy to answer any questions you may have, and as I said earlier there are representatives of a number of the water systems on the list here, as well.

(END OF PREPARED REMARKS)

Chairman Coyner said he had a couple of questions. On the handout there are numbers, and as an example next to Carson City you've got 30 ppb. How is this number derived? If it's from multiple wells, how do you average? Is it based on a volume per well? Is it a snapshot in time or is it an annual average? How do we derive the numbers?

Mr. Zimmerman replied that the numbers represent the most recent data, a snapshot in time. To determine compliance, groundwater systems are on a three-year cycle. Currently we are in the cycle 2005-7. During this period systems must sample for a whole range of items; there is more frequent sampling for certain constituents, but for arsenic and other constituents it is a three-year cycle. If they exceed the standard, it triggers a year of quarterly monitoring and a running annual average is used to determine whether a system is in compliance. So, through one sample you can "bust" the running annual average and be found to exceed the standard.

Chairman Coyner said that was great if considering a one-well, one-system scenario, but asked for clarification on how levels were figured on a multiple-well system, for instance, Carson City, if one well had 10 ppb, one 60, etc. and the water was blended down, is it volumetrically derived so that 30 becomes the average of all the wells? Mr. Zimmerman replied that each entry point in the system (each well) is monitored for water quality. Carson City has two or three wells that exceed. All of the wells eventually have to achieve the standard of 10. If the water utility blends water before the sampling point and that sampling point reflects a level of less than 10, then as long as that's blended before the first

customer then that sample is in compliance. After Chairman Coyner asked for further clarification, Mr. Zimmerman said that each well is monitored, but with the blending scenario you can have a sampling point within the system that blends various sources and as long as it meets the standard before the first customer then that's okay. He noted that Carson City, which was being used as an example, had voluntarily put themselves on a rigorous quarterly monitoring schedule to identify seasonal variability and understand blending options, etc. They are also looking at a mobile treatment unit.

Chairman Coyner noted that in that case the Carson City number of 30 is a "pretty good number" and that customers must be receiving about 30. Mr. Zimmerman clarified that they "could be" receiving 30, these wells are used for peak periods or seasonally—if they can't meet demand they would bring these wells on. Chairman Coyner said that he didn't want to digress too far but since this is a numbers-driven program he wanted to assess the method and reliability for the numbers. Mr. Zimmerman noted that NDEP has a history of monitoring on these systems, so staff looked at history to select a range that sources in a particular system fall into.

Chairman Coyner asked about the range of financial penalties in case the commission took the "other route" of not approving the exemptions and having the systems enter into compliance agreements. The answer was that there are civil penalties of $5000 a day and administrative penalties of $2500 a day for a possible penalty of $7500 per day.

Commissioner Dodgion asked about the definition of a "public water supply" because he noted that Country Club Estates was on the list with a population of 13. How many customers do you have to have to be a public water supply? Mr. Zimmerman thought that the figure of 13 was a typo, and it should be higher. He said the definition of a public water system was that they have 15 or more service connections or routinely serve 25 or more people. He noted that Country Club, Pine Grove Utility Trust (and others) are now Churchill County systems, and the treatment system was under construction and was expected to be operating by February, 2007. So Country Club Estates will cease to be a separate water system and will be part of a new Churchill County water system, with a centralized treatment plant.

Commissioner Dodgion followed up by asking about the 'risk factor' that EPA uses in setting these standards, e.g. one additional cancer per million? Mr. Zimmerman confirmed that at 10 ppb they estimate you would be protecting against one additional cancer per million people. Commissioner Dodgion asked if they had taken that into account with their determination of 'no unreasonable risk to health' and Mr. Zimmerman answered affirmatively.

Commissioner Sponer asked about systems that had not applied for the exemption, and Mr. Zimmerman noted that there were still 26 applications that

had needed additional information, but in addition several systems had not applied. These are likely to be pursued through an enforcement action to be brought into compliance. They aren't required to apply for an exemption. Commissioner Sponer confirmed the self-reported nature of the figures in the information given to the Commissioners. She also asked whether the program applied in Clark County and Mr. Zimmerman confirmed that the program is statewide and not delegated to the counties, although NDEP works with the local health boards. Commissioner Sponer asked for figures on water systems in Nevada, and Mr. Zimmerman supplied that there are about 600 systems in Nevada, with about 80 having arsenic issues. In response to further questioning he also clarified that surface water systems are on an annual reporting cycle, and that drinking water systems on Indian reservations are directly supervised by EPA, not NDEP. Some of these systems also have arsenic issues and will be working with EPA on them.

Commissioner Sponer asked how NDEP would get the systems, that had not applied or whose applications were incomplete, into compliance. Mr. Zimmerman responded that they would be bringing another group of applications (the currently incomplete) to the Commission at the next meeting; that 28-30 systems had actually started or would shortly begin treatment programs, and that about 10 small systems that had taken no action could eventually be subject to enforcement action to be brought into compliance. He noted other methods including new sources, and technologies like point-of-use treatment. that might be considered by systems.

Commissioner Rackley asked about estimates that were mentioned at a previous SEC meeting of 100 systems and possibly $300 million statewide. Had that number now come down? Mr. Zimmerman said that yes, EPA analysis now was lower. Burt Bellows, Engineer with the Bureau of Safe Drinking Water came forward to say that it was questionable to name an exact figure given the variables, but it was nowhere near the $3-400 million that had been put forward in the past. The EPA has recently completed studies nationwide, and Mr. Bellows said he would be more comfortable presenting those figures at the next meeting. Commissioner Rackley asked about funding—did the systems plan to use the State Revolving Fund (SRF)? Mr. Zimmerman confirmed that seemed to be the number one source, but the USDA was also a source of funding that systems were looking at and already utilizing. Mr. Zimmerman confirmed to Commissioner Rackley that a figure of $20 million was correct as an estimate of costs for the group of applications before the Commission. The SRF has about $10 million of funding per year, so they should be have the capacity to fill a significant part of the demand. Most of the systems are already taking action.

Commissioner Sponer inquired as to where the Fallon system had obtained $17 million to meet the arsenic standard? Mr. Zimmerman cited Federal funding and work with Fallon Naval Air Station (which now has a common system with the city), as well as the state AB198 program.

Commissioner Rackley asked about the town of Fernley. Mr. Zimmerman said the Board of Health had previously negotiated a bilateral compliance agreement with Fernley, and the city was in the process of working to meet the standard.

Chairman Coyner moved to public comment on the applications. There being none, and no further discussion from the Commission, he asked for a motion, phrased to grant an initial three-year exemption for the 36 systems listed on the consent calendar.

Motion - Commissioner Sponer so moved, and the motion was seconded by Commissioner Anderson. Without further discussion a vote was taken, which was unanimously in favor.

Chairman Coyner announced he would move down the agenda to Item IV, Regulatory Petitions.

IV. Regulatory Petitions

(1) Regulation R158-06: Standards for toxic materials applicable to designated waters:

(Kathy Sertic, Bureau Chief of Water Quality Planning, gave preliminary remarks on this regulation and R159-06, Colorado River Salinity Standards, noting that three workshops were held, in Carson City, Elko and Las Vegas. Numerous comments were received, from a variety of sources, and the Bureau felt that they were adequately addressed in the petitions before the Commission).

Paul Comba of the Bureau of Water Quality Planning presented R158-06. The substance of his presentation was a PowerPoint illustrating the various provisions of the regulation, which it is attached as Appendix 2**.**

Commissioner Henderson asked what entity had the authority to designate waters as to the 'beneficial uses,' and asked whether there were irrigation or livestock waters that also carried a designation of beneficial use for aquatic life?

Mr. Comba said that was correct, and that most of the designated waters in the state have been designated for multiple uses. In these cases, the most restrictive water quality standard will become the standard for that water body. Commissioner Henderson followed up by asking if a rancher has a permit from the state engineer to water livestock, and the water used exceeds the aquatic life beneficial use standard, what happens?

Mr. Comba agreed that this type of situation exists, and said that in that case NDEP would probably list the water body as being impaired for aquatic life, but not for other uses. Commissioner Henderson then asked what then is the liability

on the water right holder? Mr. Comba asked Kathy Sertic to address the question. She approached the podium and stated that when a standard is exceeded they must be listed on the 303D List of impaired waters, and the Clean Water Act requires that her Bureau establish maximum daily loads for those waters to address those parameters. She said the situation Commissioner Henderson had referred to was called non-point source pollution, and a non-regulated (voluntary) program to work with the owners is in place to reduce the sources. Commissioner Henderson asked that if agriculture uses were ever removed by Federal action from the non-point source category, the Commission be informed. Ms. Sertic noted that certain aspects of agriculture, like feedlots, had already been removed from the non-point source realm and required permits.

Tom Porta, NDEP Deputy Administrator, now came forward and addressed the Commission regarding outreach to farmers and ranchers throughout the state, developing a guide that included a list of impaired waters and best-management practices in coordination with Cooperative Extension. He also noted that watershed plans were adopted 30 years ago and are being reviewed to see if criteria and standards are current and appropriate. If NDEP suggests use changes based on these reviews the changes will be presented to the SEC for approval. Kathy Serticr then further clarified the components of water quality standards.

Chairman Coyner asked if microgram per liter is a ppm (part per million), and Mr. Comba said that it was a part per billion. He also asked about the listing of municipal and domestic supply numbers. Mr. Comba replied that the updating of standards in the regulation was being done in pieces, with this piece being aquatic life. Chairman Coyner noted that the Commission had just dealt with arsenic levels and the lowering of the drinking water standard to 10 ppb and wondered why it was still 50 ppb in the chart shown. Tom Porta came forward to clarify that surface standards are different from 'end-of-tap' standards which were what had been presented earlier. The numbers in this regulation are set for surface water, and it can be treated to meet standards at the tap. Chairman Coyner asked if there was no number listed for a substance in the chart, did that mean no standard was in place? Mr. Porta answered "yes." There was a brief discussion by Mr. Comba of a few of these components.

Chairman Coyner moved to public comment on the regulation.

Nicole Rinke, who identified herself as an attorney with the Western Mining Action Project, stated that she was commenting on behalf of Great Basin Mine Watch. She has been practicing in Nevada for about four years, mostly on mine and water issues. She applauded the parts of the petition which made several of the aquatic life standards more restrictive. The organization had a concern with the chronic mercury standard. They also had a concern with the exception for exceedences that are not economically controllable, and asked that it be defined

for the Commission so that there would be guidance on how those determinations were made. She expressed concern with the exception for pollutants that are less than the detect level, and desired guidance on the criteria that would be used. She asked the Commission to consider these concerns before voting.

Chairman Coyner thanked Ms. Rinke, and noted that with the mercury levels the level was still quite low, and that the new number was based on a standard in place at the federal level for 18 years, but not incorporated into state regulation.

When there was no further public comment, Chairman Coyner closed the public comment period, and asked if the Commission had any further comments or questions. There being none, he asked for a motion on R158-06, as amended.

Motion – Commissioner Rackley moved approval of Regulation 158-06 as presented, and the motion was seconded by Commissioner Shull. Without further discussion a vote was taken, which was unanimously in favor.

(2) Regulation R159-06: Colorado River Salinity Standards:

John Heggeness, Bureau of Water Quality Planning presented the regulations to the Commission. The substance of his presentation was a PowerPoint presentation illustrating the various provisions of the regulation, which it is attached as Appendix 3.

There were no questions from the Commission, and there being no public comment, Chairman Coyner asked for a motion from the Commission.

Motion - Commissioner Sponer moved approval of Regulation R159-06, Colorado River Salinity Standards, as presented, and the motion was seconded by Commissioner Taylor. Without further discussion a vote was taken, which was unanimously in favor.

(3) Regulation R138-06: Clarification of Certain Fee Categories for Mining Facility Permits:

Dave Gaskin, Chief of the Bureau of Mining Regulation and Reclamation, introduced Mike Leigh, Supervisor of the Bureau's Regulations Branch, as the person who would present the regulation to the Commission. Below are Mr. Leigh's prepared remarks:

(BEGIN PREPARED REMARKS BY MIKE LEIGH)

Thanks Dave, Good Morning, my name is Mike Leigh and I serve as Supervisor of the "Regulation Branch" in the Division's Bureau of Mining Regulation & Reclamation. The Regulation Branch reviews submitted mine designs and

issues water pollution control permits to most of the active mines in Nevada. Additionally, we review monitoring reports and conduct compliance inspections at the permitted mine facilities. We appreciate this opportunity and your consideration in review of the proposed regulation listed under Petition Number 3 (LCB File R138-06) of your packet.

In the way of disclosure, let me first state that the proposed regulation does **not** contain any change in the existing fee categories or fee amounts. Rather the proposed amendment offers an administrative correction to the category language for dewatering permits and an administrative clarification for the permit categories related to mining operations. For your reference the Mining Regulation Program is entirely funded by the fees collected for the issuance and modification of water pollution control permits as issued to mines in Nevada. The mining permit categories and fee structure have been in place for a significant number of years, and it is important to note that no changes are being proposed to either with this regulation amendment.

So if it is working so well, why are we before you today? As with most items or programs, there is a benefit to routine review and maintenance, and a prior Internal Administrative Audit resulted in a recommendation that clarification should be provided for the mining fee categories as I will outline shortly. The recommendation does not change the Division's policy for how the mining permit categories are applied, nor the fee amounts charged, but simply provides a descriptive clarification to better ensure clear understanding of the permit categories.

Regarding notice of the proposed amendment, the proposed regulation change has been provided to industry and comments solicited. Public Notice of the proposed regulation and workshops were posted on the Division's website on July 26, 2006; as well as being mailed to all persons on the Bureau's Interested Parties Mail List. Additionally, Public Notices were published in the newspapers for Carson City and Elko prior to conducting public workshops in those locations on August 22 and 23rd. To date, I have heard no comments or concerns in opposition.

As to the actual proposed language, if you take a look at NAC 445A.232 as provided in Petition #3 of your packet, you can see that the only changes are in Section 2 which start on Page 14 of LCB File No 138-06. You will note that the existing language describes the permitting categories for dewatering by the number of gallons discharged. However, the current regulation describes this water as "process" water rather than "dewatering" water, so we are proposing a correction by deleting the word "process" and replacing it with "dewatering".

(*At this point Chairman Coyner requested that Mr. Leigh further expand on the differences between process water and dewatering water. Mr. Leigh said that dewater was water removed by a mine to allow access to an ore body. It is*

groundwater that is being removed from a particular location, and normally reinfiltrated into the same hydrographic basin. It is natural groundwater. Process water has a specific regulatory definition—typically where chemicals have been added to help with the extraction of certain ore.)

Again, no changes are proposed in the fee amounts or actual permit categories, only the correction for proper description of the water type. The second change is noted on Pages 15-17 of the petition, and involves clarification in the description, that the permit categories are based upon the designed tonnage capacity of the mining process. The first category on Page 15 is actually for a "physical separation facility" or placer operation, to which we have added the category header as Physical Separation Facility. Similarly, all of the following adjustments include addition of the category header as a "Mining Facility Designed to" chemically process at the given tons per year. The way this works, is that the submitted design indicates the max tonnage that a given mine facility is intended to operate and which then determines the category of permit that is required, and which in turn, establishes the fee amount for the facility. The larger the facility, the higher the fee amount. The intent of the change is to improve upon the category description by more clearly stating that it is based upon the designed processing capacity for the given facility. Again, this does not represent any change in the manner in which the program or permits are administered, nor in the actual fee amounts.

I hope that I have been clear in my presentation and that this information is useful to your determination. To recap, the proposed amendment is the result of an internal administrative review process which recommended clarification be provided for the fee categories. Public notice of the proposed change was properly provided, workshops conducted, and no contrary comments have been received. And notably, no changes are proposed in either the existing fee structure or the actual fee amounts. We are at your disposal to answer any questions you may have.

(END OF PREPARED REMARKS)

Commissioner Taylor asked if dewatering water were used for another purpose, such as irrigation, would NDEP issue a permit for that? The answer was that they do not—normally dewatering water is typically returned to an infiltration basin. If it was discharged to a river that would be through a discharge permit. Irrigation is not covered under this permit.

Commissioner Henderson asked if the regulation was revenue neutral? Mr. Leigh said that yes, there would be no changes in administering the program; this regulation was meant to be a clarification. Commissioner Henderson followed up by noting that no public comments had been received; did this imply that the mining industry was in concurrence with these changes? Mr. Leigh stated that that was his understanding.

Chairman Coyner wondered if due to the differences in fees (between dewatering and process water), would someone change a category to avoid paying a higher fee? Mr. Leigh noted that they need two separate permits, and that the changes will not affect that fact.

This completed the questions from the Commission, and Chairman Coyner asked for public comment on the petition. There being none, public comment was closed and Chairman Coyner asked for a motion from the Commission.

Motion - Commissioner Henderson moved approval of Regulation R138-06, as presented by staff, and the motion was seconded by Commissioner Rackley. Without further discussion a vote was taken, which was unanimously in favor.

It was now noon, and at this point Chairman Coyner adjourned the meeting until 1:00 p.m.

The Chairman called the meeting back to order at 1:00 p.m. and moved to the next petition, R139-06

(Due to other commitments, Commissioner Henderson was not present for the afternoon session, and votes on the motions below do not include his vote).

(As noted above, Regulatory Petition R179-05, Waste Landfill Cover Requirements (Item 4 on the petition list), was removed from the agenda and would not be taken up at this meeting.)

(5) Regulation R139-06: Air Quality Reforms - New Source Review:

The petition was presented by Greg Remer, Permitting Supervisor with the Bureau of Air Pollution Control.

(BEGIN PREPARED REMARKS BY GREG REMER)

Good morning Mr. Chairman, members of the commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this afternoon to present proposed changes to the air quality regulations contained in Petition 2006-09 (which is Item IV(5) on the agenda).

The agency held a workshop in Carson City on August 1st, 2006, to solicit comments and input on the proposed revisions. One person attended the workshop. No adverse comments were received at the workshop. Generally, these changes are intended to remove certain provision of the air quality regulations related federal New Source Review (NSR) reform. In the interest of time, if it pleases the Commission, I will provide

an overview of the changes and offer discussion at the end of the overview. However, please interrupt at any time if further clarification is needed.

Sections 1 through 13
Sections 1 through 13 of the Petition are requested to be modified to remove provisions related to Clean Units and Pollution Control Projects. The Commission originally added these provisions to the regulations in 2004 to respond to changes in the Federal PSD and NSR regulations, known as NSR reform. A law suite was immediately filed by various parties over certain provisions of the NSR reform changes. However, the court did not grant a stay of implementation and the final ruling was delayed. As a result, in order to maintain federal delegation of the PSD program Nevada was forced to adopt the provision in their entirety. In 2005 the DC Circuit Court, among other things, vacated the Clean Unit and Pollution Control Project provisions of the federal NSR reform rulemaking. Accordingly, this petition seeks to remove all Clean Unit and Pollution Control Project provisions from the NAC.

Section 14
Similar to the revisions to the other Sections of this petition, Section 14 requests repeal of all NAC sections related solely to Clean Units or Pollution Control Projects.

This concludes the overview presentation. We recommend that the Commission approve the changes as proposed in Petition #2006-09. I will be happy to take any questions you may have. Thank you.

(END OF PREPARED REMARKS)

Commissioner Dodgion asked what happens to the pollution control projects? Mr. Remer explained that it was a process that allowed sources to escape PSD review if they installed one of these types of project changes, and because the court vacated that, these projects no longer exist as an 'out' to the PSD rules. Commissioner Dodgion concluded that, then, it was not an escape hatch from permitting, and Mr. Remer agreed.

Chairman Coyner asked if Nevada ever had any of these projects? Mr. Remer replied that there was one application from a mine for some Clean Unit exemptions, and most of the process was completed when the court case was decided and the Division eventually denied it because there was no basis to take action from the federal side. Chairman Coyner asked what the company ultimately did; did they pursue an alternative? Mr. Remer said there was no alternative available—these regulations were a way to avoid the PSD permitting process. He added a bit more background on the Clean Unit designation and how it related to the permitting process.

Chairman Coyner now asked for public comment; there being none, he asked for further comment, or a motion, from the Commission.

Motion – Commissioner Dodgion moved to approve Petition R139-06 as presented, and the motion was seconded by Commissioner Hunt. Without further discussion a vote was taken, which was unanimously in favor.

Chairman Coyner moved down the agenda to:

(6) Regulation R151-06: Air Pollution Control Permitting Provisions:

The petition was presented by Greg Remer, Permitting Supervisor with the Bureau of Air Pollution Control.

(BEGIN PREPARED REMARKS BY GREG REMER)

Good morning Mr. Chairman, members of the commission, my name is Greg Remer. I'm a permitting supervisor with the Bureau of Air Pollution Control. I'm here this afternoon to present proposed changes to the air quality regulations contained in Petition 2006-16 (which is Item IV(6) on the agenda).

The agency held a workshop in Carson City on August 1st, 2006, to solicit comments and input on the proposed revisions. One person attended the workshop. No adverse comments were received at the workshop. Generally, these changes are intended to clarify various provisions of the air quality regulations. In the interest of time, if it pleases the Commission, I will provide an overview of the changes and offer discussion at the end of the overview. However, please interrupt at any time if further clarification is needed.

Sections 1 through 3
Sections 1 through 3 of the Petition are requested to be modified to respond to a deficiencies identified by U.S. EPA in Nevada's SIP. These changes enhance the enforceability of the code.

Section 4
Section 4 identifies Federal Regulations that the Commission has adopted by reference. There are various federal regulation update references, but most of the changes relate to the Federal New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The section contains updates to existing adopted subparts as well as entirely new subparts. Nevada's sources are required to deal directly with EPA until any applicable federal regulations have been adopted by the Commission and our delegation authority updated by EPA. We will be submitting our delegation request, following adoption and filing.

Sections 4 through 19
With the exception of Sections 8, 16 and 18, Sections 4 through 19 are requested to be modified to provide for various technical corrections. For instance, Section 5 modifies the term "air quality plan for the State of Nevada" to "applicable state implementation

plan." This terminology is also modified in other sections of the NAC as well and is intended to respond to comments from U.S. EPA for SIP submittal.

Section 8
Section 8 also responds to a deficiency identified by U.S. EPA in our SIP submittal. This section clarifies the requirement for monitored data to be calibrated in accordance with EPA methods.

Sections 16 and 18
Sections 16 and 18 provide for changes to the Class II and Class III permitting provisions. Several years ago, the NAC was split into provisions related to Operating Permits to Construct and Operating Permits. In this process, operating permits were also split into Class I, Class II and Class III sub-heading provisions. When this split occurred, the expiration and construction extension provisions that previously applied to all operating permits, were inadvertently made applicable to only Class I operating permits. With the requested we are seeking to include similar expiration and construction extension provisions in both the Class II and Class III operating permit provisions.

This concludes the overview presentation. We recommend that the Commission approve the changes as proposed in Petition #2006-16. I will be happy to take any questions you may have. Thank you.

(END OF PREPARED REMARKS)
(5145)

Commissioner Sponer asked what the acronym 'SIP' stood for, and Mr. Remer replied that it stood for 'State Implementation Plan.' In Sections 4-19 it was a language change. Chairman Coyner remarked that it was impossible to track all of the 'EEEs,' "KKKs' etc. (section references). He asked as a bottom line, if as state employees, could we all live with these? Mr. Remer said that in essence, adopting all of these many subparts would ensure that the applicants would continue to deal with the state instead of the EPA. He noted that certain categories were not present yet in our state regulations, but were in the regulation for possible future projects.

Commissioner Hunt asked Mr. Remer to address the strikeout of "sub 6 under section 19" and asked if that was included in either section 16 or 18. Mr. Remer said that it was only intended to apply to the Class I program, and thus did not apply where it was being struck. It was a holdover mistake.

Chairman Coyner asked for public comment; there being none, he looked for further comment, or a motion, from the Commission.

Motion – Commissioner Sponer moved to approve Petition R151-06 as presented, and the motion was seconded by Commissioner Shull. Without further discussion a vote was taken, which was unanimously in favor.

Leo Drozdoff, Administrator of NDEP, approached the podium and noted that NDEP had suggested putting petitions 8, 9 and Administrator comments together, primarily to have a consistent discussion on mercury and the mercury control program. He therefore requested that the Chairman move to Petition 9 next, and that he be allowed to give some general remarks on mercury as background. With the Chairman's agreement, Administrator Drozdoff delivered remarks which are summarized below:

Over the last two years the agency has spent a lot of time and resources on mercury. The regulations before the Commission continue efforts to strengthen regulatory tools and controls with regard to mercury. These include adding mercury at certain levels to CAPP (Chemical Accident Prevention Program) and the Clean Air Mercury Rule (CAMR).

What we're trying to do with CAMR is implement a fairly contentious federal rule in a way that works for the state, the environment and the regulated entities. There will also be an update today on the Nevada Mercury Control Program, and we have good things to report.

I am submitting a letter from Director Biaggi (Director of the Department of Conservation and natural Resources) which I will give to Mr. Walker to make copies for you for the record (Director Biaggi's letter is attached as Appendix 4). And with that I'll turn it over to Mark.

Mark Zusy, Supervisor, CAPP, now presented the petition for Agenda Item IV(9) to the Commission.

(9) Regulation P2006-19: Mercury Storage:

Mr. Zusy provided a general overview of the regulation, noting that it was a temporary regulation that addresses acute hazards associated with handling & storage of mercury (Hg). The regulation would bring Hg under the authority of NDEP's Chemical Accident Prevention Program (CAPP) by adding Hg to the list of regulated substances.

Chairman Coyner noted that at the regulation threshold, only one facility would fall under this threshold. How many tons are going to be brought into the state? Mr. Zusy replied that 4800-4890 tons. Chairman Coyner then asked why the limit was fixed at 100 tons? Mr. Zusy explained that one consideration was that the material would be stored in 19 warehouses and he set the limit to ensure that each one of the facilities would be a regulated 'process.' Under further questioning, he clarified 'process,' and the logic behind the 100-ton limit.

Commissioner Anderson asked if the CAP Program provides for specific emergency response abilities, or how that part is addressed. Mr. Zusy responded that NDEP has no specific emergency response duties under the program—the obligation is on the plant to develop a plan under CAPP. They are obligated to coordinate with the local responders under the program. But NDEP does not get down to the level of specific equipment, etc.

Commissioner Hunt requested an idea of the volume of 100 tons of mercury, and 5,000 pounds, respectively. Mr. Zusy said the mercury is stored in 76 pound cylinders, four of which are placed in an overpack drum, and four drums sit on a pallet, with a combined weight of 1000 and 2000 pounds. Commissioner Hunt followed up by asking if the 5,000 pound for two releases to become eligible for the CAPP program seems like a lot of mercury to be released to get into the program. Mr. Zusy summed up through a discourse on various substances, that this number had to do with volatility.

Chairman Coyner noted that it would have to be someone in the state that's not under cap that would have to have two releases totaling 5,000 pounds. Mr. Zusy interjected that they would *both* (releases) have to be 5,000 pounds. Chairman Coyner asked for scenario relating to that 5,000 number.

Mike Elges, Chief of the Bureau of Air Pollution Control, now approached the podium and elaborated that the Commission was now struggling with some of the same issues that the Bureau had when it developed the thresholds to begin with. Mr. Zusy had done a good job on the science. He noted that right now we are dealing with one known facility; we have been working closely with the facility and have a good number on how much material they will be handling. This material is new to this program and he suggested that it would be good to see how it worked in practice. He stated that it was fairly consistent with some of the other programs in place, including some he'd be talking about later. He said that they had considered what to do if another large source came into the state or another facility began handling what they would consider a significant amount of mercury. Under these circumstances they would revisit the numbers, but at this point they did not have the information to back up different numbers.

Chairman Coyner replied that we all agree that if there were a 5,000 pound mercury spill it would be a huge deal, and Mr. Elges agreed.

Commissioner Dodgion noted the media coverage and clean-up expenses that had resulted from perhaps a thermometer full of mercury being spilled at a Northern Nevada school.

Administrator Drozdoff now approached the podium and said that was true, but it was important to note that while this large amount at a facility would now be under CAPP, there were other programs, both in NDEP and at other agencies,

that dealt with mercury at the lower levels. This regulation is about bringing a facility, or type of facility, into a safety program under CAPP. It doesn't mean that's all they have to do. The requirements of CAPP are strict and onerous and we feel that this is the appropriate level based on what we know today.

Commissioner Sponer asked for clarification of the chart—under mercury, the threshold quantity is 200,000 pounds? Mr. Zusy said that 200,000 pounds was the amount that has to be present in a process in order for that process to be covered under CAPP. He explained that this was a new chemical being added to the program. Commissioner Sponer followed up, saying, then if you had 10,000 pounds it would not be regulated? Mr. Zusy confirmed that it would not be, under CAPP. But the Commission has the legal authority to list chemicals and set thresholds. He continued that the amount in the regulation was based on what is out there today. It would be possible to come back and regulate a different threshold quantity.

Chairman Coyner asked how far down the threshold would have to drop to bring in the next party (handler of mercury). Mr. Zusy said that there is no recycler currently in the state, but the next largest amount listed on the State Fire Marshall's report was a dental alloy maker at 1600 pounds. Commissioner Sponer then asked for confirmation that they would not be regulated by NDEP, which was confirmed by Mr. Zusy. She queried, again, who would regulate them? Mr. Zusy said that the storage, separation and handling of chemicals would, he believed, come under the fire code and OSHA. Chairman Coyner said then is anybody from the state looking after that 1600 pounds?

Mike Elges returned to the podium to note that if there were accidental releases then the appropriate unit of NDEP would handle that, Air, Water Quality, etc. When it comes to who regulates what, CAPP deals with handling and storage so that the releases do not occur. Chairman Coyner followed up by asking if this meant that no one from the state was looking after that 1600 pounds, in regard to storage and handling? Mr. Elges said he understood that there were no other programs, at least in Air and Water, that were set up to deal with handling and storage. Local fire departments and jurisdictions, and the State Fire Marshall had supervision, as far as he was aware.

Chairman Coyner noted that it was a good question who was looking after the 1600 pounds. Commissioner Sponer said so if we lowered it, the state would be looking after it? She asked some further questions about local jurisdiction and inspection. Mr. Zusy noted the site would have to have an inventory of the chemicals present available to inspectors.

Chairman Coyner summed up by stating that staff had made an assessment and thought that, for the time being, 200,000 pounds was the right level to have for the CAPP program. Mr. Zusy confirmed to Commissioner Sponer that that was what he thought. She asked why that the 1600 pounds didn't qualify, as it

seemed like a lot of mercury. Mr. Zusy said it is a lot, but the question is whether the CAPP program, with its procedures, maintenance and other requirements, should apply to something that size. He said again, when you get into the relatively lower quantities the fire marshall looks into handling and storage—with very large quantities involved, handling and processing, especially at Hawthorne there is the potential to have to do some reclaiming work if there is any compromise in a container.

Chairman Coyner asked about the list (of mercury storage sites)—is it a list NDEP has compiled? Mr. Zusy said it was the list the Fire Marshall compiled every year. It is sent to NDEP. Chairman Coyner thought it would be useful to look at the list at the next SEC meeting, and to have Mr. Zusy talk to the fire marshal about where the 1600 pounds are located and what they are doing about it. He said he was responding to Commissioner Sponer's interest and concern that, potentially, the 200,000 pound limit was inadequate. He said he was prepared to move forward with the regulation that was before the Commission, but wanted her to be reassured that someone was looking after the smaller quantities. Staff has deemed that 1600 pounds need not be under CAPP, but the Commissioner would like a response to that particular number and why it shouldn't be under CAPP. Commissioner Sponer summed up by saying that she would like to know that if someone was holding more than, say, 500 pounds of mercury in one location maybe the Commission ought to think about that.

Mr. Zusy said that another point was that the thought behind the two-release provision in the program was that if someone below the threshold were to have these releases they would then be pulled into the program. Chairman Coyner pointed out that even if the second-largest facility were to release all their mercury, they wouldn't meet the threshold, to which Mr. Zusy replied that it was a point well taken, but he summed up by saying that the agency felt that if a lot of facilities were pulled into the program they (the Division) would be inundated, but without getting a lot of benefit.

Administrator Drozdoff came to the podium to say that as always, the Division would be responsive to any requests from the Commission, and he noted that currently there is no threshold. NDEP will commit to provide the list to the Commission. He stated he wanted to avoid catching up facilities which are not suited for CAPP into the program. Time spent by NDEP staff at these facilities would be time not spent at Hawthorne, or anywhere else. It's important to direct program resources to facilities which best fit under CAPP. He asked the Commission to be cognizant of what the limitations of the program are, as well.

Chairman Coyner remarked that there is just a big gulf between 200,000 pounds and 1600 pounds and he realized there is nothing there now, but it's a big separation.

Commissioner Anderson asked about information sharing between agencies in emergency services. How will CAPP interact with the military and with Mineral County and the City of Hawthorne in information exchange regarding the storage and handling of the mercury? Mr. Zusy asked if he meant in an emergency? Commissioner Anderson replied that no, he meant right now, as you start your program, what kind of interaction will you have with the local responders? Mr. Zusy replied that we interact with them to see that the local facility has coordinated with them, to make them aware of our program, to make the information available to them. Commissioner Anderson queried, so there is information exchange as product arrives, everyone is aware of quantities, etc. Mr. Zusy said they strive to keep those lines of communication open.

Chairman Coyner asked what was the reporting period for CAPP? How often do you have to interact with, for example, Hawthorne, what's the review schedule, meetings, etc? Mr. Zusy replied that they visit the sites annually, by regulation, and conduct a site inspection for compliance. The sites register annually and provide the quantities they have on site. That just occurred in June.

Commissioner Sponer asked if there were an event, an accident such as a fire, is there a reporting system that would report to NDEP of any incidents? Mr. Zusy said there was no regulatory requirement to report to the Division in a timely manner, because they don't do emergency response, but an incident must be in their annual report. NDEP evaluates their investigations, but are not responders. The man focus of the NDEP program is preventing the accident.

Allen Biaggi Director of the Department of Conservation and Natural Resources (DCNR), approached the podium and stated that he would like to put this facility and regulatory package into perspective. The reason for this regulation is the consolidation of the national strategic stockpile of mercury at the Hawthorne facility. Nevada is obviously very concerned about mercury, and the state's only Superfund site is mercury contamination at the Carson River site from historic mining activities. NDEP has also been very proactive in limiting mercury emissions form a variety of sources throughout the state. We are very sensitive to the issue of mercury contamination and storage in the state.

He noted that the genesis of CAPP was the Pepcon explosion in 1986, from some chlorine releases that occurred immediately thereafter, and the program was refined as a result of the Sierra Chemical explosion in Northern Nevada. He said that the state was definitely a safer place to live and work as a result of CAPP. State regulation over the stockpile at Hawthorne has been on the table for quite sometime, and DCNR sees CAPP as a logical extension of the state regulatory oversight of the Hawthorne facility. The state has worked very well with facility managers as well as the National Stockpile Center in Washington, D.C., for proper storage and regulatory oversight of the mercury. The material is not in-state as yet; they are modifying storage facilities and transportation of the material is expected to begin in spring 2007. So the timing is good to bring the

facility into the oversight of CAPP so we can review the facilities and arrangements.

There has also been some legislative interest in this activity, and an interim subcommittee recommended in June the regulatory oversight of the facility by CAPP. So the presentation today is consistent with what some of the legislators desire, and if the regulation doesn't go forward today it is their intent to do it in the 2007 session.

Director Biaggi then reiterated his and the Department's strong support for the regulation before the Committee.

Commissioner Taylor asked if CAPP oversees the transport of the material as well. Mr. Zusy indicated that it includes only the storage and facility operations.

Chairman Coyner inquired whether the facility would be operated by a contractor, or by the military? Mr. Zusy deferred to Lt. Col. Hardy Green of the U.S. Army, Depot Commander at Hawthorne, who approached the podium and explained that Dan Zimmerman was the contractor that will be operating the mercury storage, and that they will be going through the training that is necessary for the operation. Staff is already trained to store and handle munitions, and it is the same contractor who will be handling this material.

Chairman Coyner asked if there was any public comment, and there being none asked for further discussion or a motion from the Commission. He asked that a motion be made specific to the quantities listed in the petition so that would be on the record.

Motion - Commissioner Dodgion moved to amend the list of CAPP materials to include mercury as specified in the petition. Commissioner Taylor seconded. Commissioner Hunt said he was prepared to support the motion but would like to see the Division evaluate the numbers again over the next year. Deputy Attorney General David Newton noted for the Commission that this was a temporary regulation and by statute would have to come back before the Commission after the next legislative session, in order to be reevaluated and become permanent. So that would give the Commission another chance to look at the regulation. Chairman Coyner now called for the vote, which was unanimous in favor.

Chairman Coyner now moved to Item IV(7) on the agenda,

(7) Regulation R154-06: Air Pollution Control Permitting Fees:

Mike Elges, Chief of the Bureau of Air Pollution control presented the regulation to the Commission. Following are his prepared remarks on Regulation R154-06:

(BEGIN PREPARED REMARKS BY MIKE ELGES)

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. I'm here today to provide a summary of proposed changes to the Air Quality fees as can be found in Petition number R154-06. As many of you are aware, the Bureau has not proposed a significant change to the Air Quality fees in more than 10 years. I wanted to provide the Commission with a summary document similar to the one that we used for our workshops. The document shows the proposed changes by permit Class. We found this to be a very effective way of showing what we were proposing in the amendments for the fees. For most of my presentation you'll be able to reference this summary.

Along with the fact that it has been many years since the fees have been revised, there are a handful of other factors that have required us to re-evaluate the fee structure as a whole. First, and probably the most important, has to do with the shut down of the Southern Cal-Edison Mojave Generating Station. The Mojave Plant ceased operation at the end of 2005 and therefore will not be providing the revenue historically seen from the facility beginning next fiscal year. Second, is to more accurately align staff and resources with where the costs are occurring within the program. Last, is to provide funding for some anticipated cuts in federal grant funding. Currently, we are planning for grant cuts on the order of approximately $120,000 each fiscal year.

As I said, the shut down of the Mojave Plant is one of the primary reasons the Bureau has had to re-evaluate the fee structure that supports the Air Program. As most of the members of the Commission are aware, the Southern Cal-Edison company entered into a federal consent decree a number of years ago that required the installation of pollution control devices. Failing to install the controls would require the facility to cease operation. For a variety of reasons, the company was not able to complete the installation of the controls and thus, shut down the operation December 31, 2005.

It is a well known fact that the Mojave Plant was the largest air emissions source in the State and subsequently provided the largest amount of fees. The annual average fees from Mojave were a little over $366,000 per year. Therefore, our first task was to adjust the fee structure to make up for this loss in revenue.

Having been through a number of fee adjustments in the past, I'm always asked a couple of specific questions. The first is, "where are the Bureaus' resources being utilized?" The second is, "how does that resource use relate to the fees that a source is paying"? In the past these questions have been very difficult to answer, as we had little or no data to support an answer. So, in anticipation of having to answer these questions, the Bureau conducted a year long time assessment of all of our key personnel. Before making any adjustments to the fee structure, we first evaluated the results of our study.

In looking at the cross section of industry regulated under the Air Program you

can generally group the stationary sources into two groups, that being the major and minor sources. For the most part, our evaluation showed that the staff time devoted to the minor source program matched pretty closely with the amount of revenue generated from the minor source portion of the fees. There are a couple of specific areas that didn't quite fall into this category that I'll discuss in more detail in a moment. Aside from these specific areas, the minor source program utilization of staff and resources lined up pretty well with the amount of revenue being generated from those sources. Our evaluation of the major source program did not yield quite the same result. Results showed that, in general, the major source program was not providing sufficient revenue in relation to the time and resources being utilized by the agency in regulating these facilities.

Taking the information that we gathered from our time assessment we then began to develop a revised fee schedule. Since our time assessment generally showed that the minor source program fees did not need significant change, I'll begin by running through those proposed revisions.

When we evaluated the Class III permits we did not see any need for changes in those associated fees. Therefore, we are not proposing any fee changes to the small Class III permit holders.

The first significant change that we are proposing for the minor sources, is to do away with the annual emissions fee for Class II sources. Of the emissions fees collected annually from the minor sources, roughly 6% of the revenue is tied to the actual emissions. The remaining 94% is currently collected as maintenance fees. When we evaluated all of the effort that goes into collecting the required information needed to invoice for the emissions portion of the fee, it was not hard to see that we were spending more time developing and managing paperwork than this portion of the fees would cover. Therefore, we are proposing to remove the emissions fee portion of the fees for the minor sources. This is not the case for the major sources which I'll discuss more in a moment.

The second change that we've proposed for the minor source program has to do with adjusting the annual maintenance fees for sources that are permitted with a potential to emit between 80 and 100 tons per year of a criteria pollutant, between 21 tons and 25 tons of any combination of HAPs, or between 8 and 10 tons of any single HAP. Facilities in these brackets are referred to as "synthetic minor sources" because they typically take emissions or operational limits to keep their operations below the major source thresholds. What we have found is that we are spending a large amount of time both permitting and inspecting these facilities, primarily because they are so close to the major source threshold. In many cases, these facilities actually consume more time than some of our major sources. Therefore, we believe that a change is necessary to better align the fees with the corresponding workload. As shown in Section 4, subsection 7, paragraph b, (this starts at the bottom of page 6) you can see that we are proposing to adjust the annual maintenance fees for the Class II sources such

that we introduce an additional tier for these synthetic minor sources. The fee for these sources would go from $3,000 to $5,000 per year. It should also be noted that in this same Section we are proposing to increase the lowest tier in the maintenance schedule from $250 to $500 per year. This is for sources that are permitted at levels below 25 tons per year of any criteria pollutant in the Class II program. Also, we are proposing to increase the annual maintenance fee for Class II General permits from $250 to $500. These changes are being done in order to better balance staff time with the fees generated from these permits.

The last thing I wanted to mention regarding the annual fees has to do with changes that we are proposing to the Surface Area Disturbance permits that we issue. With the sustained growth that we've experienced throughout the State, we've seen a corresponding increase in complaints and actions that we've had to take regarding fugitive dust and non-permitted land disturbances. These activities consume a significant portion of our Compliance and Enforcement Branch's time, and were clearly shown as an outlier in our time study. Therefore, we are proposing to establish a tiered annual maintenance schedule that is tied to the amount of acreage that an owner chooses to disturb. Currently, all Surface Area Disturbance permit holders are charged an annual maintenance fee of $250. We are proposing to change that fee to those shown in Section 4, subsection 7, paragraph e, (this begins near the bottom of page 7). As you can see, we are proposing to establish fees based on tiers that range from 5 to 20 acres as the lowest tier with an associated fee of $250 to any disturbance that exceeds 500 acres having a fee of $5,000 per year.

As far as application filing fees are concerned, we are only proposing two changes. We are proposing to increase the Class II General Permit application fee from $400 to $500 and we are proposing to increase the Surface Area Disturbance application fee from $400 to $500. Again, this is being done in an effort to try to true things up with staff time and resource utilization. No other application fee changes are proposed in this package.

I believe that covers all of the changes we are proposing for the minor sources. Although I've talked a fair bit about the minor sources, I think that it is pretty easy to tell that we really are not proposing changes that radically affect the minor source program. I don't believe that many of the smaller sources will see a significant increase in fees, and in many cases some will see slight reductions because of the removal of the annual emissions fee.

I'd like to take a couple more minutes to talk about the changes associated with the major source program. This is where we did see the need to make adjustments for the amount of time spent by our staff. The first major change that we are proposing is to increase the annual emissions fee from $5.60 per ton to $16 per ton. This change is identified in Section 4, subsection 5, (near the middle of page 5). So unlike the minor sources where we propose to remove the annual emissions fee, we are proposing to increase this fee for the major sources. This

accomplishes a few things. First, it addresses the short fall of fees associated with the shut down of Mojave. Second, it begins to address the disparity between staff time and the current amount of fees generated from the major sources. Lastly, it partially addresses the anticipated short fall in grant funding that I mentioned earlier.

The other change that we are proposing is an increase in the annual maintenance fees for the Class I sources. Currently, all Class I sources are required to pay an annual maintenance fee of $12,500. We are proposing to establish a tiered system for sources with fees ranging from $15,000 to $30,000 depending on the type of facility. These revisions are shown in Section 4, subsection 7 (near the middle of page 6). I should note that in developing these tiers we did our best to tie time spent by staff with the source category. I think a good example is that of the municipal waste landfills. These sources are Class I because of specific federal regulations, but don't require as many resources, primarily because they don't modify their operations much and have relatively low emissions. Therefore, the proposed maintenance fee is set at the low end at $15,000.

As you can tell, the big fee changes really occur in the major source category. This is consistent with the information that we gathered from our time study and incorporates the changes needed to cover the revenue short falls that we anticipate.

I would like to quickly make mention of two last items that are identified as changes in the proposed rule. The first can be found in Section 1, subsection 1, beginning near the bottom of page 1. As part of our study, early on we noted that a significant amount of staff time was being dedicated to pre application review items such as monitoring and modeling protocols, proposed project evaluations and other activities associated with work conducted well in advance of a major source application being filed. This effort, which we support, generally means that we will be provided a much more complete application when it is finally submitted. However, there are a number of instances were we conduct much of this work but no application is ever filed. Thus, we never receive a fee that in theory covers the costs. Worst yet, there are a few facilities that choose not to work closely with us prior to submitting these complex applications and we find that we are spending an inordinate amount of time describing the level and degree of deficiency such that it takes time away from being able to work on more complete applications. This is a complaint that I continue to hear both from industry and from the Branch Supervisors. So in an effort to try to mitigate some of these issues, we are proposing a voluntary and informal pre-application review process that can be requested by an applicant of a major source or major modification. This review comes with an associated review fee of $50,000. We developed this fee based on a review of the number of staff and time necessary for us to evaluate all of the associated met and ambient data that is used to support the submittal of an application. I should point out here that we don’t

believe this to be a consulting fee. This is a fee that would be used while working with a sources consultants to better ensure that all appropriate information, data and related documents are prepared for the submittal and processing of a major source application.

The second item reflects a continued request by the industry that we not wait several years and have large increases in our fees. To address this request, we are proposing to implement a 2% increase on annual fees beginning in July of 2009. This language can be found near the middle of page 8 of the petition. It should be noted that this provision allows the agency to suspend the inflationary increases should the revenue generated exceed the needs of the Bureaus'.

I believe those are the major changes proposed in these amendments. I want to quickly make mention of the Workshops that we held for these proposed changes. Two Workshops were held, one in Elko and the other in Carson City. Also, the agency made contact with representatives from all of the major sources and industry associates, and discussed the proposed changes in detail to ensure a complete understanding of the proposed amendments. While there was a fair bit of discussion as you would expect with any fee change provisions, no real adverse comments were received regarding these changes. I will mention that there was one facility representative that was concerned about the increase in fees in the major source area. After further discussions with the company we are currently working with them such that they can move to a minor source permit and have much lower fees.

In summary, the proposed fee changes provided in these amendments have been adjusted to make up for anticipated shortfalls and changes in revenue streams, and to better align the staff and resources utilized by industry with the costs associated with the program.

With that, I'd be happy to try to answer any questions you may have.

(END OF PREPARED REMARKS)

Chairman Coyner asked if the switch to the proposed fee schedule were made today, would it be revenue-neutral? Mr. Elges replied that the answer would be no—that's why it's tailored for the next fiscal year. He noted that the billing had been done for this year. Taking into account the loss of the Mojave plant fees, the regulation will be revenue neutral. Chairman Coyner followed up by asking why the inflation adjustment was not taking effect until 2009? Mr. Elges said that there had been extensive back and forth about the inflation adjustment, once it was decided to have it they felt it was best to have gradual transition, to stabilize things for a few years and move in small intervals. He added that the primary target was the 2008-09 budget and they are seeking to make sure they can demonstrate a basis to support the budgets at the proposed flat rates for the next 2-3 years. Chairman Coyner reflected that his agency, which is also fee based,

grapples with theses same questions about inflation. He said that automatic increases had been a concern and had come before the Commission before, but that he approved of the Director's ability to cancel the increases if economic conditions warranted it. Mr. Elges noted that industry was fully in favor of the inflation-adjustment approach as opposed to the same fees for years, followed by big jump.

Commissioner Sponer asked about the increase in the dollar-per-ton emissions rate. Mr. Elges clarified that the inflation adjustment applied to the $16 per ton emission rate, and also to the maintenance fee as well, so there was uniformity among the increases.

When there were no further questions from the Commission, Chairman Coyner asked for public comment; one member of the public had filled out a speaker request but said from the audience that he did not need to speak. There were no further public comments and Chairman Coyner commended Mr. Elges for his preparation, noting that industry was not complaining about the fees. He asked the Commission for any further comment, or a motion.

Motion – Commissioner Shull moved that the Commission approve Regulation 154-06 as presented, and the motion was seconded by Commissioner Rackley. Without further discussion a vote was taken, which was unanimously in favor.

Chairman Coyner announced a 10-minute break.

The Commission reconvened at 3:00 p.m. Chairman Coyner moved down the agenda to Item (8) on the petition list, R162-06, the Clean Air Mercury Rule.

(8) Regulation R162-06: Clean Air Mercury Rule (CAMR):

Mike Elges presented the petition to the Commission. The following are his prepared remarks:

(BEGIN PREPARED REMARKS BY MIKE ELGES)

Mr. Chairman, members of the commission, for the record, I'm Mike Elges, Chief of the Bureau of Air Pollution Control. I'm here today to provide a summary of proposed changes to the Air Quality regulations that will incorporate the federal Clean Air Mercury Rule as can be found in Petition number R162-06. I had not planned to do a complete line-by-line run through of the proposed provisions but I can do so if there are questions at the end of my presentation.

In March of 2005, the USEPA issued the Clean Air Mercury Rule, cleverly dubbed CAMR, which established provisions for regulating mercury emissions from coal-fired electric generating units. Under the CAMR provisions, a nationwide mercury emissions cap was set for new and existing units. Each state receives an annual budget for

mercury emissions and is allowed to develop a program that provides for the distribution of the mercury allowances, with the overarching requirement that the states budget can not be exceeded. This in turn ensures that the national cap is not exceeded.

Under the CAMR provisions a state has three options for developing a program that ensures that it can meet its CAMR budget. The first option is to join an EPA administered emissions trading program in which the state must follow the mercury allowance distribution methodology prescribed by EPA. The second is by joining that same EPA administered program but developing a state specific mercury allowance allocation methodology. The third option is to develop an overall program that demonstrates that the mercury emissions will not exceed the state budget for each year. After several meetings with the affected stakeholders, it was determined that the best option for Nevada was to utilize the second option and modify only the mercury allocation methodology portion of the federal rule and structure it to address the unique needs of the State. In doing so, we have dubbed the proposed program for Nevada, "Nevada CAMR". This was done so that it was not to be confused with the "Federal CAMR" program. Under the federal provisions, the agency must develop a regulatory program and submit a State Plan to EPA in accordance with the CAMR rule requirements by November 17th of this year. This regulatory package constitutes the basis for our State Plan.

In addition to meeting the established mercury budget in the federal program, a major objective of the proposed "Nevada CAMR" program is to encourage additional mercury reductions from the power industry in Nevada by promoting the installation of state of the art mercury controls and consideration of cleaner coal combustion technologies such as gasification, at new and existing units. We believe that this is consistent with the direction we are going in with other industry sectors that emit mercury as an air pollutant. It is also a major goal of ours to someday be able to permanently retire mercury allowances. To achieve these objectives, the agency has prepared provisions that require the permitting of applicable "Nevada CAMR" units and proposes to adopt mercury emissions budgets and deadlines as specified in the "Federal CAMR" rule, with a few exceptions to the allocation methodology. Before describing those exceptions, let me first describe the annual mercury allocation budgets for Nevada. Phase I of the annual allocation period begins in 2010 and runs through 2017. During this period Nevada will receive 570 pounds per year of mercury allocations. Phase II begins in 2018 and continues on into the future at which point Nevada will receive 224 pounds per year. So you can see that there is a pretty significant drop in mercury allocations beginning in 2018.

Before getting into any more detail, I'd like to take a minute and get some terminology straight. First, when I refer to a "CAP" I'm referring to the national CAMR CAP set by EPA. In these provisions the State is not proposing to establish a new CAP. Rather, the State Plan must ensure compliance with the State mercury budget established under the federal CAMR Rule. This in turn ensures that the national mercury cap is achieved. We simply have to ensure that our provisions demonstrate that we can meet the established mercury budget for Nevada. Allocations and allowances can be a little

confusing as well. When I refer to allocations I'm referring to the States mercury allocations that we in turn distribute or allocate through the program. A mercury allowance is equal to one ounce and is the unit basis for compliance demonstration purposes. That is, at the end of the year, a source must demonstrate compliance by having secured allowances in an amount sufficient to cover their mercury emissions. I think that it is also important to note that this program differs significantly from the Acid Rain cap and trade program. One of the biggest differences is that under the CAMR program the State is being held to a mercury budget and is required to determine how best to allocate allowances, yet still not exceed the budget. This approach makes the allocations the State's rather than the regulated sources which is quite different from the Acid Rain program. Under Acid Rain, States are not held to a budget and for that matter are not really involved in the trading of emission allowances at all.

So with that let me briefly describe the derivations from the federal rule that we are proposing. Please keep in mind that the changes from the federal rule are only in the allocation distribution methodology. First, the "Nevada CAMR" program proposes that no mercury allowances be allocated to a unit which has been permanently retired or has allowed its permit to expire. The federal rule does not prohibit allocating allowances to retired units. With the shut down of the Mojave Plant, we did not see any benefit to the State for providing allowances to a facility that is not operating. We believe that those allowances would simply leave the State and be used elsewhere. The second change we are proposing has to do with the timing of the initial allowance allocations. During the initial period, states must submit their initial allowance allocations to EPA. The federal rule proposes a five year period from 2010 through 2014. The Nevada program proposes to submit allowance allocations for the control periods 2010 through 2012. We are proposing a shorter period as we believe that more information regarding units' actual mercury emissions will be generated over the next few years and we don't want to be locked into a prescribed amount of allocations for more than the minimum required three year period. This also relates to our allocation methodology, which is the third change that we are proposing. Instead of maintaining a single mercury allocation account, we are proposing to maintain four distinct allocation accounts.

This is really the key to being able to provide the mercury reduction incentives that we hope to achieve from this program. So as proposed we would be taking the annual State allocations, the 570 and 224 pounds, that I mentioned earlier, and distributing them into four accounts. The first account is what we are calling the "Existing Source" account. This account will be established to provide existing units with their annual mercury allowances. However, the twist here is that instead of using EPA's method that would allocate **all** of Nevada's allowances to the existing units, we are proposing to provide them with an amount equal to what they actually emit. This approach makes allocations available for the other accounts and ensures that extra allowances are not simply leaving the State. The second account is the "New Unit" account. This account will provide mercury allowances for new units for three years. Once a new unit has passed the three year timeframe it is considered an existing unit and would be eligible for allowances under the Existing unit account. This differs from the federal allocation method as new units under that rule must go to the national market and obtain

allowances. Again, under the Nevada CAMR program the distribution of allowances for new units would be based on the units' actual emissions. You can really begin to see here that we are doing our best to not penalize units but also to ensure that the State maintains control over all mercury allowances not actually needed by the sources. Thus, no additional mercury allowances are provided at this stage.

So you are probably asking, where is the incentive to reduce mercury if the State is going to provide exactly what a source emits? The incentive comes by way of the third allocation account which is called the "LEU/IGCC" account. That stands for low emitting unit and integrated gasification combined cycle combustion technology. Simply put, this is the low mercury emissions account. This account establishes additional mercury allowances for existing or new units with very low mercury emissions. Unlike the previous allowances that I described, allowances awarded through this allocation account are ones that a source can elect to bank or trade depending upon their preference. As I said earlier, the other accounts are designed to cover the amount of mercury emitted. No more. No less. This account provides additional allowances over and beyond the other accounts, with which the owner or operator can elect to do what ever they wish. Uses may include using allowances for other units that a company may own in other states, or banking allowances for later use. A source may also elect to sell the allowances on the open market. Therein lies the incentive.

In order to define the level at which a unit qualifies for this low emitting category, we have developed a series of emission rates that define a units' eligibility. This table is contained in Section 40 of the proposed provisions, which is on page 21 of your packet. As you can see we have developed two levels of criteria and the associated emission rates. The Level II criteria were derived from EPA's early attempts at developing New Source Performance Standards. The criteria will be used to define what we've internally defined as a "Low Emitting Unit". We believe that some of our existing units may be able to achieve these levels because of co-benefits from existing pollution control technology and through the purchase of low-mercury coals. New units will, at a minimum, be installing pollution controls that will meet the NSPS standards. That combined with the low mercury coals that we are seeing most applicants designing their processes for, should result in new units easily qualifying for this category. Level I is what we internally are calling the "ultra-low mercury emitting unit" levels. With the work that we've done most recently regarding new coal fired boilers, we believe that the levels that we have set here are achievable and really establish the next generation of mercury emissions levels from more conventional coal fired units. Also, to ensure that the control technology and these emission rates are maintained at appropriate levels, the regulations contain a re-evaluation criteria of the emission levels for each of the first three years of the program, then on a 3-year basis thereafter. This will ensure that the levels correspond to the amount of mercury reduction available as technology improves. Any changes in these emission rates would come back to the Commission as revisions to these rules. Again, this is where the incentive is based for reducing mercury emissions. I should clarify here that these emission levels are annual levels that must be achieved on a 12-month rolling period.

The last allocation account is called the “Special Account”. This account has been established such that the State can manage and distribute allowances. As I’ve described so far, the first two accounts are designed to cover the actual emissions of mercury from sources. The “LEU/IGCC” account is the incentive account. To effectively manage and fund these accounts, we are proposing the “Special Account”. Based on the information and the projections that we have made to date, we anticipate that this account will be funded such that we will be able to continue to adequately allocate allowances for the other three accounts, auction allowances on the national market, the funds from which would be used to support the program, and most importantly, be able to bank and/or retire mercury allowances from the program as a whole. You can see this as described in Section 41 on page 24 of your packet.

Currently our best estimates for initially funding the three accounts are as follows: The “Existing Unit Account” would start with 100 pounds, the “New Unit Account” would have 50 pounds, the “LEU/IGCC Account” would have 200 and the “Special Account” would have 220. This type of distribution would be used to get the program started and is based on the best information and forecasting that we can perform to date.

Based on our most current evaluations, it appears that Nevada will be provided a generous amount of annual mercury allowances when compared to what we believe sources in the State will emit. Our first priority is to ensure that the other mercury allocation accounts are funded accordingly, and that the incentives developed are realized. However, we also anticipate that there will be extra allowances, at least during the initial few years of the program. Since the allowances are, by federal rule, the State’s, we believe that it is appropriate for us to manage them as part of the air quality program.

As with many of the newer federal air quality programs, there seems to be a shift towards cap and trade programs like the one I’ve described here. However, the funding for these programs is not something that comes with the mandate. Therefore, we are faced with having to increase fees to fulfill the regulatory mandate. Since the federal focus for establishing air quality standards seems to be diversifying through these types of programs, we are looking for opportunities to diversify the mechanisms for funding the air program as well. Our future goal is to revise the Air Quality Statutes to allow the agency to provide revenue through mechanisms like this program where the proceeds from auctioned allowances would be put back into the air quality fund. We currently have a BDR in that proposes this change, and I believe Leo plans to discuss this in more detail in his briefing to you later today. Regardless, we see that this may be a way to partially support the air program without just increasing fees to the stationary sources. Likewise, we are very optimistic that we will also be able to retire a number of these allowances, such that mercury reductions beyond what our incentive program strives for are realized. That being said, specific amounts of allocations and their relative distribution within this account have not been defined. So much of this program is yet unknown, the fact that we are going to be dealing with a statutory change, the whole State Plan approval process by EPA, the solvency of the national market being in question, and so on, that we simply could not see spending the time now to describe

these distributions in detail. Therefore, we plan to come back to the Commission sometime before the 2010 implementation date once again when more of the details of this portion of the program are better understood. At that time we will be better versed in describing the distribution of allocations from this account.

In the mean time, fees for this program have been proposed and can be found in Section 42 which is near the middle of page 24 of your packet. This fee schedule is pretty simple. We have done our best to evaluate what type of impact this program will have on the air program and determined that we will need to support two additional engineers and their related program costs. Fees are required for permit applications from all affected units at a cost of $2,000 per application for an operating permit to construct. Annual fees are very similar to the Nevada MACT program, the first year of the program the annual fees are based on dividing $300,000 by the total number of affected units. The $300,000 reflects anticipated first year program costs. Each year thereafter, the same approach is used only that the total dollar amount is $250,000. Assuming that we can achieve the program changes necessary to allow us to begin to fund the program from auctioned allowances, we would propose at that time to begin to adjust these fees by reducing the annual dollar amount by the amount of revenue generated from the auctioning of allowances. Again, that would be a change that we would bring to the Commission once all of the other hurdles have been crossed.

I'd like to mention that when EPA develops these "Cap and Trade" programs that it puts a tremendous burden on states to develop and implement them as states needs don't always line up well with what many perceive as national issues. That being said, I would like the Commission to understand that we have done our very best to try to develop a program within the criteria that the federal rule provides and with an understanding of what information we have available to us at this point in time. Again, as information becomes available and as things progress it is inevitable that we will be back in front of you to make some changes as this program gets underway.

As far as process, and comments that we received, I think I mentioned that we had several stakeholders meetings in developing these provisions. Along with the affected Nevada utilities, we have done our best to try to involve EPA Region IX and the Clean Air Markets Division folks from EPA Headquarters. A significant amount of dialog and written suggestions were provided to get us to where we are at with the proposed rule today. We also held one workshop here in Reno on August 10th which was fairly well attended. While there was much discussion of the mechanics of the program, no adverse comment was noted. I will mention that we did receive one letter of comment from Salt River Project which is an electric utility based out of Arizona. There specific issue had to do with the proposed rule retaining many of the allowances that could otherwise be available for the national market. SRP encouraged the State to make allowance allocations available for sale from the state's "Special Account" to interconnected western utilities at a minimum. We discussed their request with them and described that allowances generated through the incentive account and the "Special Account" would be available for auction on the national market, but that we felt that we could not legally prescribe to whom the allowances should be made available

to. I will also mention that EPA has taken a particular interest in our methodology that we are proposing for allocating allowances based on a units actual emissions. EPA has concerns with the way we are proposing to "true-up" the allowances with a source before the close of the control period. We are continuing to work through these issues but again I have to say that once EPA reviews our State Plan we may need to come back and revise certain portions in order to have a completely approvable Plan.

As with many of our proposed regulation packages, we try our best to coordinate comments and working drafts with the LCB. Unfortunately, LCB doesn't always see the way we prefer to have our rules written as the appropriate way to do so. With that, the copy that you have before you has a few minor modifications that I would like to propose to the Commission as changes to the proposed rule. These changes are consistent with those noted in your versions of Petition R162-06. The first change is near the top of page 21, in Section 40. We are proposing to add the language "during the applicable control period" at the end of subsection 2 so that that subsection reads more clearly. On page 22, again as part of Section 40, we would like to change the lead in to subsection 3. Here we would suggest striking the month "March", and revising it to read "On or before 15 business days prior to June 1 of the year following the applicable control period". A little further down on that same page in subsection 4 of Section 40, we would like to propose to strike the phrase "except as otherwise provided in this subsection;" and have that sentence start with If sufficient mercury allowances are not available… We don't think there are any exceptions in the subsection. Under subsection 5, we would propose the same change. Strike "except as otherwise provided in this subsection;" on the next page near the top, under Section 41, subsection 1, we propose to correct the range of sections from 36 to 39 to 37 to 40. A little further down the page in Section 42, subsection 1, we propose to change the reference to section 30 to section 28. Two final changes; on the top of page 28, Section 46, subsection 4.d. We would like to include part 60.4120 to 60.4142 in this adoption by reference section. The last change is on page 34, Section 48, in the lead in to this section we would like to correct the reference of 32 and make it Section 31.

In summary, the proposed provisions that you have in front of you are intended to fulfill EPA's federal CAMR requirements. They do so by developing a permitting program that largely mimics the federal permitting requirements but provides for a unique approach for the State's mercury allocation methodology. The provisions provide incentives for sources to reduce mercury emissions beyond those established by EPA and with good results we anticipate being able to permanently retire mercury allowances.

With that, I'd be happy to try to answer any questions you may have.

(END OF PREPARED REMARKS)

Commissioner Sponer noted that in the regulation the total state budget (in pounds) for 2010 was 570 and asked if we know how much we are using now?

Mr. Elges said “No,” and that it was one of the difficulties of the federal requirement that states are being asked to plan this program not knowing, accurately, where they are right now. He said industry has been cooperative in setting up testing, however. Also, coal quality has a big effect on emissions—it can cause significant day-to-day variations. First indications are that actual emissions are different (lower) than allocations. In the background document on this regulation there is a discussion of utilizing the test data and Public utilities Commission’s resource plan. So we are letting the numbers come in instead of trying to set them using insufficient data.

Commissioner Anderson asked about the possible leasing of allowances for a specific period, versus auctioning and selling. Mr. Elges said there was not a mechanism for doing so under the rule; Chairman Coyner said it was a one-year deal, a one-time use; Mr. Elges elaborated that their allocation methodology is based on getting real data on what plants are actually using before the control period begins; allocation to be based on a “true-up.” Then if someone wants to exceed that, they are encouraged to get into the incentive portion, reduce emissions or put controls on.

Chairman Coyner again addressed the allowance of 570 pounds a year by 2010, saying that in response to Commissioner Sponer Mr. Elges had not named a figure—how did anyone conclude that Nevada’s allowance should be 570? Mr. Elges noted that NDEP does have some idea of current emissions—Chairman Coyner asked for an estimate—Mr. Elges said he could put the information together but with many qualifications, because of the many variables. Select companies have put together accurate studies of their emissions, but the data are just not complete.

He stated that by the 2010 year, he expected to have the accurate data needed to administer the program, however. Chairman Coyner noted the nationwide figure of 76,000 (pounds), and wondered how the Nevada allocation was set at 570? Mr. Elges said they could provide the figures for other states, and noted that some states actually got zero. He said that the idea was if a new unit was built EPA wanted them to go to the national market and purchase allowances.

He added that, in summary, they think Nevada’s numbers are high, compared to what they are emitting, or are going to emit. Chairman Coyner asked about how many sources there were in the state, and how ‘source’ was defined? Mr. Elges discussed ‘sources’ and ‘units,’ with each boiler being a ‘source.’ He listed seven units in Nevada. Chairman Coyner followed up on the 36-month baseline period mentioned on page three; Mr. Elges clarified that in effect if a new unit comes online, for the first 36 months it will be subsidized from the specific New Unit Account. New units have a ‘break-in’ period, and this is the rationale for that part of the regulation. The seven units currently in operation are taking measurements now as a ‘baseline.’ The period between 2009 and 2010 there

will be required continuous mercury monitoring devices—Nevada units are trying to be a year in advance.

Chairman Coyner asked for comments from the public, and there being none he asked the Commission for any further discussion or a motion.

Motion - Commissioner Dodgion moved that Commission approve R162-06, incorporating the handwritten edits included in the document submitted to the Commission. The motion was seconded by Commissioner Shull. Without further discussion a vote was taken, which was unanimously in favor.

Chairman Coyner now moved down the agenda to Item V, Briefing to the Commission by NDEP Administrator Leo Drozdoff.

Administrator Drozdoff, having previously presented some of his information, said he would give an update on the Nevada Mercury Control Program (NMCP) and that Deputy Administrator Colleen Cripps would also give a presentation.

He stated that from his vantage point, NMCP was working as anticipated and that he saw no reason to change direction. A lot of new information is coming in—staff has ramped up considerably—and to date, we have not found any reason for a change of direction. Deputy Administrator Cripps will give more specifics of what has come in, what the numbers are looking like. She will also talk about planned research.

Deputy Administrator Cripps now addressed the Commission, and the following are her prepared remarks:

(BEGIN PREPARED REMARKS BY COLLEEN CRIPPS)

Current Status of the NMCP

- Program became effective on May 4
- Questionnaires
  - Regulated facilities (17 facilities and 122 thermal units)
  - De minimus level could not be determined (so, it was est. at zero)
  - 2004 emissions data
    - over 90% of emissions from 5 VMRP facilities (4015 lbs total v. 3640 from 5 VMRP facilities)
  - 2005 VMRP data?
- Speciated source tests are being conducted (Brief description of the process)
- Permit application was developed and all Tier 1 sources have submitted Hg permit apps
  - Completeness period just ended and we are processing the permits
- The first round of fees was assessed
- Two additional staff are being hired (SEII and SEIII)

- Continued dialog with EPA, UT and ID, regulated community and NGOs.

Research

- Fugitive emissions (not process fugitives which are addressed through PM controls) – Industry funded (emissions from mineralized areas v. emissions from various mining surfaces
  - waste rock, heap leach facilities, and tailings
  - wet v. dry
  - active v. reclaimed
- Funding of MDN sites – wet deposition sites
  - Currently the only ones in the Great Basin
  - Two in northeast NV and a new one in Reno (urban site)
- Air Toxics research grant from EPA in cooperation with UNR scientists (June 1 start date) to develop and easily deployable and less expensive sampling system for the dry deposition of Hg. National interest.

(END OF PREPARED REMARKS)

Ms. Cripps added that at future meetings NDEP would report developments of interest in these areas to the Commission. Chairman Coyner asked if the research grant was to try to drive down the price of the monitors, which was currently $100,000, and asked how many of the monitors the state currently owned. Ms. Cripps answered that the state owned none at the present time; the research grant was to develop a different analytical method, so that the expensive equipment would not be necessary. The monitor currently being used is being borrowed from EPA Region IX. She added that in the grant there were funds for NDEP to purchase a unit for the Division. Chairman Coyner said that the Commission might like to see a demonstration of the equipment in action.

Administrator Drozdoff now approached the podium again and said he would like to address budget issues and legislation. He began with the following remarks specifically directed to changes made to the Nevada Administrative Procedures Act:

(BEGIN PREPARED REMARKS BY LEO DROZDOFF)

Good afternoon, I am Leo Drozdoff, Administrator of NDEP.

One of the issues I would like to address today concerns a recent legislative change made to the Nevada Administrative Procedures Act. The change was made to NRS 233B by the 2005 Nevada Legislature. The bill was SB 428 and it's had a significant impact on how NDEP must now respond to appeals presented to the Commission for resolution.

By way of background, in July 2005 Great Basin Mine Watch, a local non-profit organization, challenged the renewal of a Water Pollution Control Permit issued

by NDEP. The permit authorized the permanent closure of the Big Springs Mine located in Elko County, Nevada. The Big Springs Mine is owned and operated by AngloGold. Among other issues the appeal alleged that NDEP's permit improperly permitted discharges into the North Fork of the Humboldt River and its tributaries.

A panel of the State Environmental Commission was convened to hear the Big Springs Appeal in March of this year. Now retired Commission Terry Crawforth chaired the panel with the other members being Commissioners Don Henderson and Ira Rackley. The panel heard arguments from NDEP, Great Basin Mine Watch, and AngloGold -- the Intervenor in the case.

Because of a change made to the Administrative Procedures by the 2005 legislature, however, counsel for NDEP was constrained to argue certain jurisdictional limits now contained in the Nevada Administrative Procedures Act as amended by SB 428.

Specifically, SB 428 changed the statute by now requiring that a person must **not be** admitted as a party to an administrative proceeding in a contested case involving the grant, denial or renewal of a license (or a permit issued by NDEP) unless that person demonstrates to the satisfaction of the presiding hearing officer that:

> (a) His financial situation is likely to be maintained or improved as a direct result of the grant or renewal of a license (or permit); or
>
> (b) His financial situation is likely to deteriorate as a direct result of the denial of a license (or permit).

What this means -- is that anyone who brings an appeal to the Commission challenging a final decision by NDEP -- must now show standing – in terms of having a direct financial connection to a given decision. If a party cannot demonstrate this direct connection, then the Commission is compelled under NRS 233B to **not** admitted a party to an appeal.

In the case of the Big Springs appeal, in March the SEC appeals panel stayed the proceeding and requested a formal opinion from the Attorney General prior to making a decision on arguments presented by NDEP counsel on the “Standing” issue.

The Attorney Generals’ opinion was subsequently issued on June 9th of this year, and it unequivocally upheld the jurisdictional limits contained in the Nevada Administrative Procedures Act as amended by SB 428. The SEC panel reconvened on July 6th and subsequently dismissed the Big Springs Appeal based on the AG’s opinion.

Discussion

I would like to say that we at NDEP believe the changes made to NRS 233B are **not** in the public interest. The changes may also conflict with federal law by limiting citizens from exercising their right to seek administrative appeals to the Commission concerning environmental permits and other decisions made by NDEP.

In fact, the law is so construed that is prohibits anyone from challenging a decision, such as a final permit issued by NDEP, unless a persons financial interest are affected. In essence, this means that only a permittees and/or unsuccessful permit applicant would have the "right of standing" to bring an administrative appeal to the Commission. Given everyone's concern about protecting the environment, this limitation is simply not in the public interest.

In reviewing the Legislative history of SB 428, one could easily understand how the Legislature could have been misinformed by SB 428's narrow focus on "licensing issues" as opposed to the bills impact on contested cases involving environmental permitting actions. Clearly, this issue of limiting participation in contested cases involving environmental health and welfare concerns was never debated at any substantive level during passage of SB 428. Yet, the resulting constrains on the SEC's administrative appeals process remains an unintended consequence of SB 428, but it is nonetheless state law.

I would like to say that if this law stands, it could well jeopardize Nevada's delegated authority to implement programs sanctioned under the Federal Clean Water Act and the Federal Clean Air Act. I strongly believe that such an outcome would not be in the public's interest.

At this point I would be happy to answer any questions about this issue.

(END OF PREPARED REMARKS)

Commissioner Rackley said that he would like to comment, since he was part of the hearings on the issue (Great Basin Mine Watch appeal). He said if the state's primacy status is in any way compromised by this act it is not a good thing for any party, including EPA. It has potentially created a cloud over the primacy status. He agreed with Administrator Drozdoff that it is not good public policy to limit participation in the process. The current situation impacts SEC appeal panels—in fact, it literally takes the wind out of the sails of a panel set to hear an appeal, and then be told that it cannot hear it because state law does not allow the appellant to have standing. He expressed his opinion that the Commission should join with whomever was trying to change this. He asked about approaching a legislator to draft a bill to that effect—Administrator Drozdoff agreed that was an option, and said that NDEP plans to weigh in with member of the State Assembly Sheila Leslie, who plans to introduce a bill in the coming

Legislature. But that should not stop the SEC from pursuing discussions with other legislators. Commissioner Rackley said that he had also heard from other legislators who said they would support such a measure. It might make sense for the Commission to express its own interest in a solution. He asked Counsel David Newton if the legal situation impacted every board in the state, and Mr. Newton replied that it impacted every board operating under the Administrative Procedures Act, which is that vast majority.

Administrator Drozdoff stated that he thought it would be helpful if there was common position (with NDEP) that the Commission took; this would not preclude the SEC or individual members form pursuing other avenues, as well.

Commissioner Rackley said it ought to be coordinated—he wondered if any action could be taken at this meeting? Counsel Newton advised that notice would need to be given for such an SEC action, but it could be a short telephonic conference if all there was to be done was agree on language; there need not be a full Commission meeting like today's.

Commissioner Sponer asked for clarification if NDEP was going to support what Ms. Leslie was doing? Administrator Drozdoff said he could not say that since he did not have actual language to refer to, but NDEP planned to discuss the matter with the bill's sponsor to work out something that was reasonable and workable. He had not spoken to Assemblywoman Leslie directly yet. He had wanted to get a sense of the Commission's thoughts first, as well.

Commissioner Anderson asked about the Governor's Office awareness of the situation, and it was confirmed to him that NDEP had discussed this with them and they are of a like mind.

Chairman Coyner noted that there was an election to get through before it was clear who would actually be in the legislature, and that after that there would be time to look at possible bill drafts and work with sponsors; the next SEC meeting will be before the next Legislature convenes, as well. So he suggested talking about it at the next meeting, and there was no disagreement with that.

Administrator Drozdoff then discussed the impact of air permit fees and federal funding cuts. NDEP's budget is comprised much less of federal funds than it was 15 years ago; the Division has never had a large portion of the budget come from state general funds. The federal EPA has begun cutting funding to states. Fees are now two-thirds of budget. By FY 09 EPA's contribution to budgets is expected to be about 10 percent.

The fiscal facts are going to force the state to focus on state priorities, and if there are conflicts with federal priorities the state's will have to take first place, though NDEP is not looking in any way to pick a fight with EPA. Some pretty

hard choices will need to be made, however, and some tension is to be expected, was the message.

Administrator Drozdoff also wanted to bring up meetings and schedules; with three or four meetings a year the ratification of air quality violation agreements can take several months, leading to uncertainty, in some respects, regarding the agreements. He suggested the possibility of "mini-meetings" for the sole purpose of ratifying the agreements, possibly saving money, freeing up time at the full SEC meetings and providing more certainty for the regulated community.

He asked if that was a reasonable approach, and several Commission members expressed approval. Chairman Coyner asked Counsel David Newton about the possibility of three-member panels to vote on settlements. Mr. Newton answered that at the previous SEC meeting (March 2006) the question had been in terms of the Arsenic Exemptions (that were heard today) and that for this type of matter there was the possibility of the SEC approving a regulation that would allow a panel to approve such matters, but with the right to appeal to the full Commission should any party disagree with a decision.

In the matter of just the Air Quality Settlements, he believed that under NRS 445B.350 that a panel could act in lieu of the full Commission. Commissioner Sponer expressed her approval of the idea. Counsel Newton said he would check and confirm his opinion and get back to the Commission. He said he would talk to the Executive Secretary and make sure it was on the next agenda. Administrator Drozdoff said he would work with Commission staff to put something together for the next SEC meeting.

Administrator Drozdoff said that finally, he wanted to discuss other legislation of interest to NDEP and the Commission, bills they were sponsoring or had an interest in. First, there was Department of Motor Vehicles (DMV) and proposed changes to statutes regarding oversight of vehicle emissions and air quality. DMV proposes to involve NDEP in items relating to environmental science, state implementation plans and air quality—and more specifically, SEC involvement in NRS 445B.775, where the proposed statutory change would require the adoption of their (DMV) regulations by the SEC.

This would bring NDEP/SEC expertise into play earlier, to coordinate with the State Improvement Plan (SIP) and ferret out potential road blocks earlier. The other proposed statute change is NRS 445B.785, which relates to diagnostic equipment. They are concerned that they have developed these regs without an independent process—they don't have an oversight body. To their credit, DMV staff wants to work with NDEP on these in the future and seek SEC adoption, as well. The other DMV initiative is to develop a cooperative agreement with NDEP on a number of Inspection and Maintenance (I&M) programs. NDEP feels the regulated community will be well-served by this agreement.

Commissioner Dodgion expressed interest in possible I&M funds for supporting the Commission—Administrator Drozdoff said that given what the fund covers, it would be fair to look at. Chairman Coyner asked if DMV employees would actually come before the Commission with their regulations for approval. Administrator Drozdoff confirmed that.

He now moved to NDEP's request to amend NRS 445B.235, to develop alternate methods to raise revenue—specifically, the cap and trade program in the CAMR. They will also seek to update the amounts in the air quality fines in NRS 445B.640. The minimums are currently so low that it may be regarded as financially advantageous to pay fines, rather than comply with emissions limits and other requirements. Mike Elges noted that at a previous SEC meeting regulations had been adopted regarding administrative penalties; however, Legislative Counsel Bureau had later determined that this would require statute changes. There was discussion of whether the statute actually sets fines, or caps.

Referring to the water side, Administrator Drozdoff addressed the anti-degradation statute and the impact of a Supreme Court ruling that had, in his opinion, narrowly interpreted this statute. So in taking a look at the statute, NDEP had determined that Nevada's statute differs from the Federal Clean Water Act; so the Division will look to propose a change to bring it in line with the federal law. The issue is that when statute don't line up perfectly it makes for an unsettled regulatory climate. So they hope to get some clarity and certainty in this area by modeling the federal statute. Chairman Coyner inquired whether this change would have mitigated the lawsuit; Administrator Drozdoff said he was not sure, but in looking at it, certainly there is a wide degree of difference between Nevada and federal law with regard to developing policies, versus having statutes and regs. The purpose here is to make sure our water quality statutes actually mean something. And hopefully this will work with our five-year plan to bring water quality standards up to date.

This completed Administrator Drozdoff's remarks.

Chairman Coyner now opened the meeting to general public comment.

Dr. Glenn Miller, Professor, University of Nevada, Reno, but, as he stated, in this case representing Great Basin Mine Watch (GBMW), said he wanted to make some general comments on mercury regulation. He praised NDEP staff for their efforts, but said that there was still much to be done. At the March 2006 SEC meeting GBMW asked for more ambient monitoring of mercury levels. He contended that it is not that difficult to do this monitoring; GBMW has rented equipment for $5000 a month and done some of this ambient monitoring. Last year another group took this equipment to Barrick (mine) and measured high levels near their operation. He praised Barrick as a company that had done their

own monitoring, and since that time has made substantial reductions in their emissions.

GBMW has monitored other mines and found most levels lined up with reports; however, they identified two that did not (Couer-Rochester and Glammis). These were 'grab samples' that did not indicate a specific source, but they peaked near the mine operations. He said he has argued many times that NDEP should have this equipment. According to Dr. Miller, ambient measurement of mercury is easy. He also mentioned his opinion that these two operations ought to be raised to 'Tier I' site status from their present Tier II.

He disputed the NDEP report that there has been an 82-83 percent reduction in mercury releases (from mining), stating that it is closer to 67 percent. The higher number is based on a report from one mine that was their potential, not actual, emission.

His last point was the issue of *de minimus* classification. His understanding is that if emissions are below a certain level that is the *de minimus* level and NDEP just "doesn't care." He thinks that it is important to set it.

He concluded by saying measurements are important, and that he believes that the Commission is not requiring enough measurements in the implementation of the mercury rule. He added that this criticism and difference of opinion with NDEP does not mean he is not impressed with what they've done. The work that's been done is a tremendous step forward.

When there was no further public comment, Chairman Coyner said he had a question for Ms. Cripps: You said there 17 facilities and 122 thermal units (in the state); are Couer-Rochester and Glammis among these? She replied that that was correct, and he followed up by asking if it made a difference if they were Tier I or Tier II? She explained that both were Tier II because they had been in the voluntary program from the beginning. In response to another follow-up, she stated that being Tier II did not relieve them of any requirements, but does give them more time to come into compliance.

Chairman Coyner now moved down the agenda to the last agenda Item VII, Set Next Meeting Date. The Chairman asked Executive Secretary Walker about it, who replied that he was trying to get a sense of the Commission; NDEP staff had indicated that they thought next January was the month, but the Commissioners could check their calendars. It was noted that January would be in time to do business before the legislative session. After some discussion there was no negative comment on the idea of a January date, and Administrator Drozdoff indicated that it would allow for a few additional items to be heard. So the consensus was that the next meeting would be in January.

Chairman Coyner thanked members and the public, and adjourned the meeting at 5:03 p.m.

APPENDICES

Appendix 1—Agenda Item II

Air Quality Settlement Notes

Appendix 2—Agenda Item III(1)

Aquatic Life pdf

Appendix 3—Agenda Item III(2)

Colorado River Salinity Standards pdf

Appendix 4—Letter from Allen Biaggi, Director, Department of Conservation and Natural Resources

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
1	Barrick Goldstrike Mines, Inc.	NAC445B.275 "Violations: Acts Constituting; notice." For operating the Rodeo backfill feed system without the permitted dust control, for failing to notify NDEP/BAPC of scheduled repairs to the system, for failing to report excess emissions, and failing to file written 15-day reports describing the cause of excess emissions. Barrick Goldstrike completed a Supplemental Environmental Project for control of mercury emissions under the settlement.	1998	$10,000

Barrick removed the wind screen dust control from the Rodeo Backfill Feed Plant Aggregate Feed System (System 85) and operated it for over 17 weeks (May – Sept. 2005) without the control. Associated violations include failing to notify the NDEP/BAPC of repairs undertaken on the System; failing to report excess emissions, and failing to file a 15-day report detailing the cause of excess emissions.

Operating without controls caused a large amount of dust to be emitted each day. The notification and reporting of permit deviations are essential components of the requirement for self-reporting, and represent one the chief means of assuring compliance for Class I industrial sources under the Title V program.

Penalties for the violations totaled over $6500 per day, including $4400/day for emissions caused by operating without controls.

Barrick has had no violations in the last 5 years.

To settle the alleged violations, Barrick agreed to implement a mercury control project having a total value of $100,000 and pay an administrative penalty of $10,000. Barrick completed the project in April 2006 by installing a mercury "scrubber" [carbon bed] on the carbon kiln (Sys 61) at a cost of over several hundred thousand dollars.

2	Builders Choice, Inc.	NAC445B.275 “Violations: Acts Constituting; notice.” For commencing earthwork/surface disturbance operations on five acres or more without first obtaining an Air Quality Operating Permit for Surface Area Disturbance. This is Builders Choice’s first air quality violation.	1996	$600
	In December 2005, a(n) NDEP/BAPC inspector discovered that Builders Choice, Inc., had commenced earthmoving operations at its planned manufacturing facility in Silver Springs without first obtaining an Air Quality Operating Surface Area Disturbance or SAD Permit. In March 2006, the SEC ratified a settlement penalty of $3000 regarding this violation. In April, Builders Choice notified the SEC that the company had wished to appear before the commission to clarify the events leading up to the violation, but that the company had not been notified of the meeting and did not have the opportunity to appear at it. The SEC temporarily set aside the penalty to provide Builders Choice with the opportunity to appear at the next meeting. In May 2006, Builders Choice presented information that the company was told by local officials and its contractor that applying for a SAD permit was sufficient as long as the county grading permit was in hand. Based on this information, and the fact that the source had only operated for one day, the penalty was reduced to $600.		

3	Carson City Renewable Resources, Inc.	NAC445B.275 "Violations: Acts Constituting; notice." For constructing and operating replacement equipment (a wood chipper/screen) without first permitting the new equipment as a modification to the facility's Air Quality Operating Permit. These are Carson City Renewable Resources' first air quality violation.	2044 (2045, warning)	$600
	On April 5, 2006, a(n) NDEP/BAPC inspector discovered that CCRR had located an unpermitted piece of equipment - a screen/separator - at the facility and used it on a limited basis. According to the owner (Stan Raddon), the screen/separator had been brought onto the site to replace a chipper grinder that was listed on the facility's air quality operating permit. The screen/separator had only operated for part of one day. The inspector also found that the Initial Opacity Compliance Demonstrations (IOCDs) required for the chipper/grinder had not been completed. CCRR is a small start-up operation whose business is to chip wood refuse into mulch and fuel for biomass boilers. CCRR agreed to apply for and obtain a modification to its operating permit to include the unpermitted equipment; to have one or more of its employees attend training to conduct visible emissions evaluations, and to pay a penalty of $600.			

4	Dayton Materials, LLC	NAC445B.275 "Violations: Acts Constituting; notice." For failure to conduct initial opacity compliance demonstrations on six new pieces of equipment added to the facility's Air Quality Operating Permit in 2004, and for exceeding the permitted throughput limits for the main crushing circuit on six days. These are Dayton Materials' first violations in over five years.	2046, 2051	$4,200
	On October 26, 2005, a(n) NDEP/BAPC inspector doing a site inspection and record review discovered that Dayton Materials had significantly exceeded the permitted throughput limit of 400 tons/hour while operating its base plant. The significant exceedances occurred while operating on 6 separate days in 2004 through 2006. The inspector discovered that Dayton Materials had also failed to conduct the Initial Opacity Compliance Demonstrations (IOCDs) required for the several emission units permitted under a recent permit modification. Throughput exceedances represent potential violations because pollutant emission rates for most emission units, particularly those that do not have continuous emission monitoring systems, are based on material throughputs. In 2001, Dayton Materials received a Warning NOAV for apparent throughput exceedances on its crusher system for the base plant. Many facilities rely on truckloads or other means of estimating material throughputs. To address this issue and more accurately measure the throughput, the facility installed a weigh belt [whose accuracy is estimated at ~5% (20 tons/hr)]. In January 2006, the facility conducted the required IOCDs, which demonstrated compliance. In order to settle the alleged violations, Dayton Materials agreed to have one or more of its employees attend training to conduct visible emissions evaluations, and to pay a penalty of $4,200. To ensure that no additional throughput violations occur, the facility has agreed to submit a permit modification including increased throughput rates.			

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
5	Grant Smith Aggregate, Inc.	NAC445B.275 "Violations: Acts Constituting; notice." For constructing and operating equipment (a concrete plant) without first permitting it as a modification to its Air Quality Operating Permit, and for failure to conduct the initial opacity compliance demonstrations required for applicable emission points in five plants. These are Grant Smith Aggregate's first air quality violations.	2049, 2050	$5,200
	On April 16, 2006, a(n) NDEP/BAPC inspector doing a site inspection and record review discovered that an unpermitted concrete plant was located at the facility. According to facility records, the concrete plant was brought onto the premises in June 2005 and has operated on a limited basis - on only three days, for a total of ~12 hours – since that time. The inspector also found that Grant Smith had failed to conduct the required initial compliance testing for a number of systems, including the IOCDs on five systems and the emissions compliance testing on another. To address the alleged violations, Grant Smith agreed to conduct the results of all compliance testing by August 1, 2006; to have one or more employees attend training to conduct visible emissions evaluations; to apply for and obtain a permit modification to list the currently unpermitted concrete plant on the facility's operating permit; and to pay a penalty of $5,200.			

6	Mercer-Fraser, Inc.	NAC445B.275 "Violations: Acts Constituting; notice." For failure to conduct initial opacity compliance demonstrations on applicable emission points in four systems comprising a mobile crushing and screening plant. This is Mercer-Fraser's third violation this year.	2029	$2,640
	On April 11, 2006, a(n) NDEP/BAPC inspector discovered that Mercer-Fraser had removed screening and crushing equipment from its facility before performing the required IOCD tests. The equipment had recently been operated at the site. Mercer-Fraser failed to conduct the IOCDs required to demonstrate the initial compliance of four systems. The company agreed to conduct the tests as soon as the plant is reassembled in Oroville, California. In early 2006, the company was issued violations for operating a crushing and screening plant and constructing an asphalt batch plant without first applying for an receiving an operating permit. [The SEC ratified a penalty of $4800.] Because of its previous history of non-compliance, an additional 10% ($240) was added to the initial $2400 penalty for a major violations.			

7	Mountain Falls, LLC	NAC445B.22037 “Emissions of particulate matter: Fugitive dust.” For failure to control fugitive dust, which resulted in large amounts of dust becoming airborne. Mountain Falls has had numerous fugitive dust violations within the past five years. The company committed to hiring a full-time “dust monitor,” and other measures, to address the issue.	2028	$870
	On May 1, 2006, a(n) NDEP/BAPC inspector discovered that Mountain Falls was not taking adequate measures to control fugitive dust at its construction site in Pahrump. Mountain Falls is a major developer in southern Nevada and has had numerous fugitive dust violations within the past five years. Because of its previous history of non-compliance, an additional 45% ($270) was added to the initial $600 penalty for a major violation. In order to address its long-standing non-compliance issues, Mountain Falls also agreed to undertake several other measures. First, Mountain Falls agreed to hire on a full-time basis an individual who is responsible for controlling fugitive dust at the development. Second, Mountain Falls agreed to identify the contract developers – known as “merchant builders” – who build out tracts within the larger subdivision, and require those builders to obtain separate SAD permits. Mountain Falls has fulfilled both of these commitments.			

8	Nevada Cement Company	NAC445B.275 "Violations: Acts Constituting; notice." For exceeding the permitted emissions limit for fine-grained particulate matter (PM10) during compliance testing. These are Nevada Cement's first major air quality violations. In February 2002, the company had a minor violation for open burning (burning wooden pallets).	2011 (2012, warning)	$600
	During an emissions compliance test on August 26, 2005, Nevada Cement's Kiln #2 exceeded its permitted limit for emissions of particulate matter by ~5%. As required, Nevada Cement reported this deviation as soon as it became apparent. On November 22, 2005, NDEP/BAPC inspectors visiting the facility discovered that Nevada Cement occasionally used an open-bed truck to "bleed" or remove caustic fines from a silo [the emission unit that feeds the load out is currently permitted as a return to a storage bin.] Although the load-out had been in place since the facility was initially constructed and apparently was initially permitted as part of a larger process (a precipitator) that is no longer in use, its use as a load-out to remove fines to another on-site storage facility is not listed on the current permit. To correct the problem involving the unpermitted load-out, Nevada Cement applied for a permit modification. Regarding the emissions exceedance, Nevada Cement provided evidence the problem apparently began several days before the compliance test – also known as a source test – was undertaken.** In keeping with the intent of compliance testing, Nevada Cement waited until after the source test to examine the conditions of bags in the baghouse. Some of the bags had fine perforations, which explained the test exceedance. Nevada Cement provided records confirming its baghouse maintenance plan. Based on Nevada Cement's good compliance history and the limited nature (duration and level) of the emissions exceedance, we assessed Nevada Cement a penalty of $600. [**Based on records kept by the kiln stack's continuous emissions monitoring system, the opacity of the stack emissions had increased slightly – from the usual 5% to 7% - several days before the source test. After the perforated bags were replaced, the opacity returned to typical level of ~5%.]			

TAB NO.		VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
9	Nevada Land and Ranches	NAC445B.275 "Violations: Acts Constituting; notice." For conducting earthwork/surface disturbance operations on five acres or more without first obtaining an Air Quality Operating Permit for Surface Area Disturbance. This is Nevada Land and Ranches' first air quality violation.	2038	$5,100
	On June 20, 2006, in response to a complaint, a(n) NDEP/BAPC inspector discovered that Nevada Land & Ranches had constructed over ten miles of road in Esmeralda County without first applying for and obtaining a Surface Area Disturbance or SAD Permit. Based on information provided by Nevada Land & Ranches, the construction had been going on intermittently since March 2006. The managers stated that the company was unaware of the requirement for a SAD permit. The company immediately applied for the required operating permit. In consideration of the company's response to the alleged violation, and testimony that the company had equipment (a water truck) on hand to provide fugitive dust control, the penalty was decreased by 15% ($900) from our initial assessment of $6000.			

10	Road & Highway Builders	NAC445B.275 "Violations: Acts Constituting; notice." For conducting earthwork/surface disturbance operations on five acres or more without first obtaining an Air Quality Operating Permit for Surface Area Disturbance. This is Road & Highway Builders' first air quality violation since May 2002. The company had numerous violations in 2001.	2047	$3,000
	On April 26, 2006, in response to a complaint, NDEP/BAPC inspectors discovered that Road & Highway Builders had disturbed more than 20 acres along the shoulder of Highway 50 in Dayton in constructing a highway widening and repaving project. This represents a violation of the 5-acre requirement for obtaining a Surface Area Disturbance or SAD Permit. The project began in early 2006 and proceeded intermittently through the winter. It probably exceeded 5 acres of surface disturbance in early March. At an enforcement conference, Road & Highway Builders provided evidence that the project as initially bid out by the Nevada Dept. of Transportation called for only 3.5 acres of new surface disturbance. [The NDOT bid sheet called for only 3.5 acres of "grubbing & clearing".] The company had obtained SAD permits when required on other construction projects. In keeping with Road & Highway Builders good compliance record since 2001, and their explanation of how the Highway 50 project did not meet the initial requirements for a SAD permit, we assessed a penalty of only $3000 for operating without the required permit.			

11	Vanderbilt Minerals Corporation	NAC445B.275 "Violations: Acts Constituting; notice." For failure to maintain the pollution control equipment (ductwork) necessary to control particulate matter, which resulted in the emission of dense clouds of dust. This is Vanderbilt Minerals Corporation's first air quality violation since February 2002.	2030	$880
	On April 26, 2006, a(n) NDEP/BAPC inspector discovered that the baghouse at Vanderbilt Minerals was emitting large clouds of dust. The inspector found that Vanderbilt had failed to maintain the air pollution control equipment for the crushing system and allowed particulate matter to escape through a hole in the ductwork. According to company records and statements made by the company officials, the facility was scheduled for maintenance and had only been operating in violation on the day of the inspection. Because Vanderbilt had a major violation (operating without a permit) four years ago, an additional 10% ($80) was added to the initial $800 penalty for a major violation.			

12	Winnemucca Farms, Inc.	NAC445B.275 “Violations: Acts Constituting; notice.” For constructing replacement equipment (a natural gas-fired boiler) without first permitting the new equipment as a modification to the facility’s Air Quality Operating Permit. This is Winnemucca Farms’ first air quality violation.	2042	$600
	On March 28 and March 29, 2006, a(n) NDEP/BAPC inspector found that Winnemucca Farms had brought a portable, natural-gas fired, 78.2 mmBtu/hr “Nebraska” boiler onto the site and prepared it for production. Winnemucca Farms intended to use the boiler as replacement for its main boiler, which was down for unexpected repairs. This action represents failure to apply for and obtain a modification to an operating permit before constructing or operating equipment. We assessed Winnemucca Farms a $600 penalty. Within one day of finalizing the settlement, the Bureau processed a Compliance Order that enabled Winnemucca Farms to use the “Nebraska” boiler as a replacement for up to eight weeks, until the main boiler was back in service.			

Proposed Changes To Water Quality Standards Related To Aquatic Life

PREPARED BY:

NEVADA DIVISION OF ENVIRNONMENTAL PROTECTION

BUREAU OF WATER QUALITY PLANNING

Update of Standards For The Toxic Chemicals

- NAC 445A.144
- Aquatic Life Standards

  Metals and Inorganic Compounds
- Proposed Changes Not Effective Until Approved by SEC and EPA

Updates To Aquatic Life Standards

Based on EPA Published Guidance of Criteria Promulgated To Be Protective of Aquatic Life

Clean Water Act Section 304(a)

Proposed Revisions/Updates

- Most Recent Publication of 304(a) Criteria: National Recommended Water Quality Criteria, May 2005
- Single-Value Aquatic Life Criteria

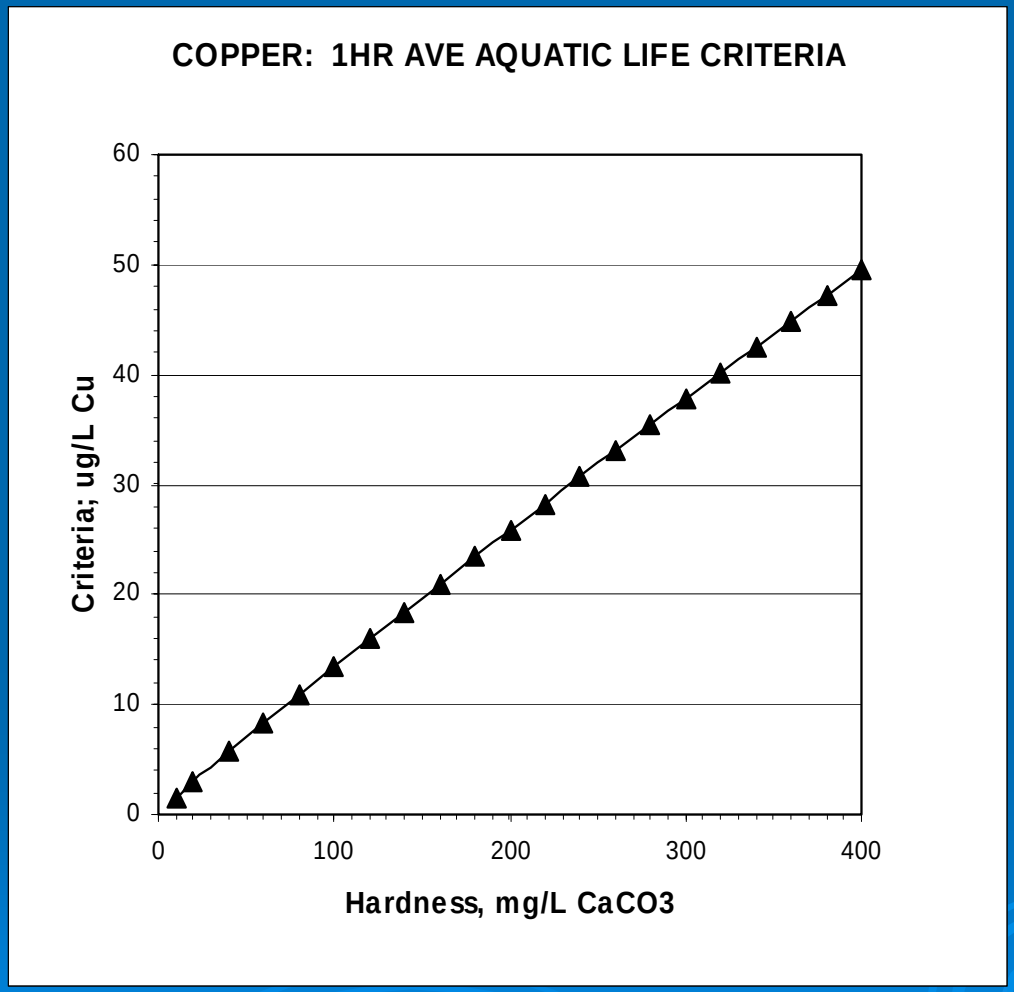
  (As, Cr(VI), Hg, Se, and Fe)
- Equation Calculated Aquatic Life Criteria

  (Cd, Cr(III), Cu, Pb, Ni, Ag, & Zn)

Criteria Expressed As Equations

- Toxicity-Hardness Relationship
- Criteria Values Vary Based on Hardness of Water
- Aquatic Life Criterion =

$$e^{(\text{pooled slope value [ln(hardness)]} + \text{y intercept term})} * (CF)$$


COPPER: 1HR AVE AQUATIC LIFE CRITERIA
Criteria; ug/L Cu
60
50
40
30
20
10
0
0
100
200
300
400
Hardness, mg/L CaCO3

Options for Incorporating New 304(a) Criteria

(1) Propose the recommended 304(a) criteria

(2) Propose 304(a) criteria that have been modified to reflect local environmental conditions

(3) Propose criteria that have been derived using other scientifically defensible methods

Proposed Changes to NAC 445A.144

- Regulatory Language Preceding the Table of Standards for Toxic Materials

  *….."the commission will review and **may** adjust the standards for the site."*

  Current Footnotes to Table of Standards Moved to Introductory Regulatory Language

- Revisions/Updates to Aquatic Life Criteria

Chemical	Existing Aquatic Life Criteria (µg/l)
Arsenic (III)	
1-hour average (Dissolved)	342
96-hour average (Dissolved)	180
Cadmium	
1-hour average (Dissolved)	$(0.85)*e^{(1.128[\ln(hardness)]-3.828)}$
96-hour average (Dissolved)	$(0.85)*e^{(0.7852[\ln(hardness)]-3.49)}$
Chromium (VI)	
1-hour average (Dissolved)	15
96-hour average (Dissolved)	10
Chromium (III)	
1-hour average (Dissolved)	$(0.85)*e^{(0.819[\ln(hardness)]+3.688)}$
96-hour average (Dissolved)	$(0.85)*e^{(0.819[\ln(hardness)]+1.561)}$

Chemical	Proposed Aquatic Life Criteria (µg/l)
Arsenic	
1-hour average (Dissolved)	340
96-hour average (Dissolved)	150
Cadmium	
1-hour average (Dissolved)	$(1.136672-[\ln(hardness)(0.041838)]) * e^{(1.0166[\ln(hardness)]-3.924)}$
96-hour average (Dissolved)	$(1.101672-[\ln(hardness)(0.041838)]) * e^{(0.7409[\ln(hardness)]-4.719)}$
Chromium (VI)	
1-hour average (Dissolved)	16
96-hour average (Dissolved)	11
Chromium (III)	
1-hour average (Dissolved)	$(0.316)*e^{(0.819[\ln(hardness)]+3.7256)}$
96-hour average (Dissolved)	$(0.86)*e^{(0.819[\ln(hardness)]+0.6848)}$

Chemical	Existing Aquatic Life Criteria (µg/l)
Copper	
1-hour average (Dissolved)	$(0.85)*e^{(0.9422[\ln(hardness)]-1.464)}$
96-hour average (Dissolved)	$(0.85)*e^{(0.8545[\ln(hardness)]-1.465)}$
Cyanide	
1-hour average (Total)	22
96-hour average (Total)	5.2
Iron (Total)	1,000
Lead	
1-hour average (Dissolved)	$(0.50)*e^{(1.273[\ln(hardness)]-1.46)}$
96-hour average (Dissolved)	$(0.25)*e^{(1.273[\ln(hardness)]-4.705)}$

Chemical	Proposed Aquatic Life Criteria (µg/l)
Copper	
1-hour average (Dissolved)	$(0.96)*e^{(0.9422[\ln(hardness)]-1.700)}$
96-hour average (Dissolved)	$(0.96)*e^{(0.8545[\ln(hardness)]-1.702)}$
Cyanide	
1-hour average (Total)	22
96-hour average (Total)	5.2
Iron (Total)	
96-hour average	1,000
Lead	
1-hour average (Dissolved)	$(1.46203-[\ln(hardness)(0.145712)]) * e^{(1.273[\ln(hardness)]-1.460)}$
96-hour average (Dissolved)	$(1.46203-[\ln(hardness)(0.145712)]) * e^{(1.273[\ln(hardness)]-4.705)}$

Chemical	Existing Aquatic Life Criteria (µg/l)
Mercury	
1-hour average (Dissolved)	2.0
96-hour average (Total)	0.012
Molybdenum (Total)	19
Nickel	
1-hour average (Dissolved)	$(0.85)*e^{(0.846[\ln(hardness)]+3.3612)}$
96-hour average (Dissolved)	$(0.85)*e^{(0.846[\ln(hardness)]+1.1645)}$
Selenium	
1-hour average (Total)	20
96-hour average (Total)	5

Chemical	Proposed Aquatic Life Criteria (µg/l)
Mercury	
1-hour average (Dissolved)	1.4
96-hour average (Dissolved)	0.77
Molybdenum (Total)	19
Nickel	
1-hour average (Dissolved)	$(0.998)*e^{(0.846[\ln(hardness)]+2.255)}$
96-hour average (Dissolved)	$(0.997)*e^{(0.846[\ln(hardness)]+0.0584)}$
Selenium	
1-hour average (Total)	20
96-hour average (Total)	5

Chemical	Existing Aquatic Life Criteria (µg/l)
Silver (Dissolved)	$(0.85)*e^{(1.72[\ln(hardness)]-6.52)}$
Sulfide (undissociated hydrogen sulfide) (Total)	2.0
Zinc	
1-hour average (Dissolved)	$(0.85)*e^{(0.8473[\ln(hardness)]+0.8604)}$
96-hour average (Dissolved)	$(0.85)*e^{(0.8473[\ln(hardness)]+0.7614)}$

Chemical	Proposed Aquatic Life Criteria (µg/l)
Silver 1-hour average (Dissolved)	$(0.85)*e^{(1.72[\ln(hardness)]-6.59)}$
Sulfide (undissociated hydrogen sulfide) 96-hour average (Total)	2.0
Zinc	
1-hour average (Dissolved)	$(0.978)*e^{(0.8473[\ln(hardness)]+0.884)}$
96-hour average (Dissolved)	$(0.986)*e^{(0.8473[\ln(hardness)]+0.884)}$

Summary of Proposed Changes to Aquatic Life Water Quality Criteria

- More Restrictive: Cd, Cr (III), and Ni
- About the Same: As, Cr(VI), Cu, and Ag
- Less Restrictive: Pb and Zn
- No Change: Fe, Se, Mo, and CN

Changes Made To Draft Rationale

- Public Workshops & Comments
- Proposed Aluminum and Chloride Aquatic Life Criteria Withdrawn

Colorado Salinity Standards Update

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Colorado Salinity Standard

Colorado River Basin Salinity Control Forum

- Recommended Salinity Criteria
- Nevada Standards
  - NAC 445A.143

- Colorado River Basin Salinity Control Forum
  - Triennial Review
  - “2005 Review - Water Quality Standards for Salinity, Colorado River System”
    - http://www.coloradoriversalinity.org/

Colorado Salinity Standard

- Update Colorado River Salinity Standard
  1. NAC 445A.143 - Colorado Salinity Criteria
     - Reference the 2005 review
  2. Lake Mead
     - NAC 445A.195 – TDS, footnote d
  3. Las Vegas Bay
     - NAC 445A.197 – TDS, footnote c

- NO CHANGES TO COLORADO SALINITY NUMERIC CRITERIA

Colorado Salinity Standard

NAC 445A.143 Cooperation regarding Colorado River; salinity standards.

1. The State of Nevada will cooperate with the other Colorado River Basin states and the Federal Government to support and carry out the conclusions and recommendations adopted April 27, 1972, by the reconvened 7th session of the conference in the matter of pollution of interstate waters of the Colorado River and its tributaries.

2. Pursuant to subsection 1, the flow weighted annual average concentrations for total dissolved solids in mg/l at the three lower main stem stations of the Colorado River are as follows:

- **BELOW HOOVER DAM..... ..... 723 mg/l**
- **BELOW PARKER DAM..... 747 mg/l**
- **IMPERIAL DAM..... ..... 879 mg/l**

Colorado Salinity Update

2. Pursuant to ~~**subsection 1**~~ **the "2005 Review - Water Quality Standards for Salinity, Colorado River System", as presented by the Colorado River Basin Salinity Control Forum,** the flow weighted annual average concentrations **for the calendar year** for total dissolved solids in mg/l at the three lower main stem stations of the Colorado River are as follows:

BELOW HOOVER DAM..... ..... 723 mg/l
BELOW PARKER DAM..... 747 mg/l
IMPERIAL DAM..... ..... 879 mg/l

Colorado Salinity Update

- NAC 445A.195 Lake Mead excluding area covered by NAC 445A.197.
  - Total Dissolved Solids
    - Footnote d

d. The ~~details of this standard are set forth in the "1996 Review-Water Quality Standards for Salinity, Colorado River System" approved by the Commission on March 25, 1998.~~ **salinity standard for the Colorado River System is specified in NAC 445A.143.**

Colorado Salinity Update

- NAC 445A.197 Lake Mead from 1.2 miles into Las Vegas Bay from confluence of Las Vegas Wash with Lake Mead.
  - Total Dissolved Solids
    - Footnote c

c. ~~**Any increase in total dissolved solids must not result in a violation of the standards set forth in "1996 Review-Water Quality Standards for Salinity, Colorado River System" approved by the Commission on March 25, 1998.**~~ **The salinity standard for the Colorado River System is specified in NAC 445A.143.**

Colorado Salinity Update

1. Update The Standards To Reference The 2005 Review.
2. Simplify Updating Triennial Colorado River Salinity Standards.
3. All Salinity Footnotes In Colorado Basin Referencing Salinity Criteria Will Refer To NAC 445A.143.

Colorado Salinity Update

- Workshops were held in,
  - Carson City - May 23, 2006
  - Las Vegas - May 25, 2006
  - Elko - June 1, 2006
- There were no comments.

ALLEN BIAGGI
Director

KENNY C. GUINN
Governor

KAY SCHERER
Assistant Director

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Division of Environmental Protection
Division of Forestry
Division of State Lands
Division of State Parks
Division of Water Resources
Natural Heritage Program
Wild Horse Program

STATE OF NEVADA

Department of Conservation and Natural Resources

OFFICE OF THE DIRECTOR

September 5, 2006

Mr. Mel Close, Chairman
State Environmental Commission
901 S. Stewart Street
Carson City, Nevada 89701

Dear Mr. Close:

The purpose of this letter is to express the support of the Department of Conservation and Natural Resources to the revisions of the Chemical Accident Prevention Program (CAPP) to include the storage of large quantities of mercury (item IV.9 of the September 6, 2006 State Environmental Commission agenda).

The State of Nevada, and specifically the Hawthorne Army Ammunition Depot, has been selected to be the national repository for the nation's strategic stockpile of mercury. This action consolidates the national stockpile (over 4300 tons) from various locations throughout the country to Nevada. The State and its citizens are very sensitive to the presence of mercury in our environment. Nevada's only Superfund site, the Carson River Mercury Site, is the result of wide scale contamination from historic mining practices. Currently, a concerned effort is ongoing to reduce mercury emissions from all sources in the State.

The regulatory petition before you today would place the storage of large volumes of mercury, such as the national stockpile, under the regulatory oversight of the CAPP. This program had its genesis in the PEPCON explosion and chlorine releases in Southern Nevada and was further refined as a result of the Sierra Chemical explosion in Northern Nevada. Without question, the CAPP has been a success and has resulted in the state being a safer and healthier place to live and work.

In June of this year, the Legislative Commission's Subcommittee to Study the Protection of Natural Treasures recommended the inclusion of the storage of large volumes of mercury into the CAPP program. With the approval of the regulatory proposal before you today, the need for statutory action is likely not needed.

In summary, the Department of Conservation and Natural Resources strongly supports the passage of agenda item IV.9 for the regulatory oversight of the national strategic mercury stockpile.

Thank you in advance for your consideration.

Sincerely,

Allen Biaggi
Director
Department of Conservation and Natural Resources

cc: Steve Robinson, Deputy Chief of Staff, Governor Guinn
Senator Dina Titus, Chairman, Subcommittee to Study the Protection of Natural Treasures