

BEFORE THE STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION

In Re:
Appeal of Medical Waste Treatment Facility
Permit No. SW1900REV00
MediWaste Disposal LLC

A.J. BROWN'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE
AND MOTION TO CLARIFY AND LIMIT THE SCOPE OF
INTERVENTION, EVIDENCE, AND ARGUMENT

Appellant A.J. Brown respectfully submits this Response to MediWaste Disposal LLC's Petition for Leave to Intervene and requests that the State Environmental Commission clarify and limit the scope of MediWaste's participation in this appeal.

This request does not seek to prevent MediWaste from defending its direct financial and operational interests as the permittee. It seeks to preserve the distinction between MediWaste's private interests and the Nevada Division of Environmental Protection's independent obligation to establish that it lawfully issued Permit SW1900REV00.

I. TIMELINESS AND PROCEDURAL REQUEST

NAC 445B.8915(2) provides that a party may file a response to a petition for leave to intervene within five calendar days after receiving the petition.

MediWaste's Petition for Leave to Intervene is dated September 18, 2026. The Commission's website states that an order granting intervention was issued on September 21, 2026.

To the extent the Commission granted intervention before expiration of Appellant's five-calendar-day response period, Appellant respectfully requests that this Response nevertheless be accepted as timely and that the intervention order be reconsidered, clarified, or modified as necessary to address the limitations requested below.

II. MEDIWASTE'S DIRECT INTEREST DOES NOT AUTHORIZE IT TO SPEAK FOR NDEP

MediWaste has a direct financial and operational interest in maintaining Permit SW1900REV00. Appellant does not dispute that the Commission may permit MediWaste to defend that interest.

However, much of Appellant's Opening Brief concerns whether NDEP complied with Nevada law and required administrative procedures before issuing the permit. Those issues include, among other matters:

1. What information NDEP reviewed before issuing the permit;
2. What permit application and supporting documents constituted the final administrative record;
3. Whether required plans, data, findings, and determinations were completed before permit issuance;

4. Whether material documents were made available during public notice and comment;
5. Whether NDEP lawfully deferred substantive plans and compliance determinations until after permit issuance;
6. What NDEP considered, relied upon, or rejected when making its decision;
7. Whether NDEP provided the required opportunity for meaningful public participation; and
8. Whether NDEP's decision was supported by the administrative record existing at the time the permit was issued.

These are questions concerning NDEP's conduct, reasoning, administrative record, and compliance with law. MediWaste did not exercise NDEP's governmental authority and cannot establish through its attorneys what NDEP reviewed, considered, intended, concluded, or relied upon unless those matters are demonstrated by NDEP's contemporaneous administrative record or competent testimony from the responsible NDEP official.

MediWaste may present legal argument concerning the validity of its permit. However, attorney argument is not evidence and cannot replace missing findings, missing documents, incomplete agency analysis, or explanations that were not part of NDEP's decision when the permit was issued.

III. THE COMMISSION MAY LIMIT THE SCOPE OF INTERVENTION

Under NAC 445B.8915(3), the Commission may grant intervention when the petitioner demonstrates a direct and substantial interest and the intervention does not unreasonably broaden the issues or prejudice another party. The regulation authorizes participation with respect to the matters set forth in the intervention petition.

MediWaste's direct interest is its interest as the permittee in preserving the permit and avoiding operational delay or financial harm. That interest supports participation in the appeal. It does not authorize MediWaste to assume NDEP's governmental role, provide testimony regarding NDEP's internal decision-making, or reconstruct NDEP's administrative justification after permit issuance.

Allowing MediWaste to supply factual explanations for NDEP's actions would prejudice Appellant by transforming an appeal of NDEP's decision into a new proceeding in which the permittee could supplement or repair the administrative record after the public-comment and appeal periods had closed.

IV. NEW EVIDENCE AND POST-PERMIT EXPLANATIONS SHOULD NOT BE USED TO CURE THE ADMINISTRATIVE RECORD

NAC 445B.8914 governs the admissibility and relevance of evidence in Commission proceedings.

NAC 445B.8914(6) specifically permits the Commission to consider evidence concerning an alleged procedural irregularity by the Department when that irregularity is not reflected in the record. This provision is directly relevant because Appellant's Opening Brief alleges procedural irregularities involving public availability, deferred submissions, incomplete plans, and the contents of the administrative record.

NAC 445B.8914(7) further provides that the Commission will not consider evidence that is not relevant and directly related to the subject matter of the proceeding.

Evidence concerning MediWaste's investment, anticipated revenue, business hardship, or desire to begin operations does not establish whether NDEP complied with the statutes and regulations governing permit issuance. Economic consequences to the permittee cannot substitute for proof of lawful agency action.

To the extent NAC 445B.8914(5) applies, it further restricts consideration of evidence that was not submitted to NDEP before issuance of the challenged decision, except under the specific conditions stated in that subsection.

If MediWaste presents new technical evidence, newly prepared plans, additional engineering explanations, or post-permit factual assertions that NDEP did not possess and rely upon before issuing SW1900REV00, that material should not be used to retroactively validate the permit.

If new information is necessary to determine whether the facility satisfies the governing requirements, the appropriate remedy is to return the matter to NDEP for completion of the administrative process, appropriate agency review, and any legally required public participation. The permit should not be affirmed on the basis of an administrative record reconstructed during the appeal.

V. NDEP MUST ANSWER FOR ITS OWN ADMINISTRATIVE ACTIONS

NAC 445B.8925 permits both the Department and an intervening party to submit response briefs. The regulation's separate identification of the Department and an intervening party confirms that they have distinct roles.

NDEP must therefore respond for:

1. Its interpretation and application of the governing statutes and regulations;
2. The documents and information it reviewed;
3. The contents and completeness of its administrative record;
4. Its public-notice and public-participation procedures;
5. Its findings and determinations;
6. Its decision to defer plans, testing protocols, financial assurance, and other requirements until after permit issuance; and
7. The factual and legal basis upon which it issued SW1900REV00.

MediWaste may advocate for its desired outcome, but it cannot establish through post-permit attorney argument that NDEP performed an administrative act that is not documented in NDEP's record.

VI. REQUESTED RELIEF

Appellant respectfully requests that the Commission:

1. Accept this Response as timely under NAC 445B.8915(2);
2. Reconsider, clarify, or modify the September 21, 2026 intervention order as necessary to preserve Appellant's right to respond;
3. Clarify that MediWaste may defend its direct interests as permittee but may not speak on behalf of NDEP concerning what NDEP reviewed, considered, intended, concluded, or relied upon;
4. Require any factual representation concerning NDEP's administrative actions to be supported by NDEP's contemporaneous administrative record or competent testimony from the responsible NDEP official;
5. Prohibit the use of post-permit attorney argument, newly prepared evidence, or post-permit explanations to cure missing findings, incomplete analysis, deferred substantive requirements, or other deficiencies in NDEP's administrative record;
6. Require NDEP to respond independently to Appellant's allegations concerning NDEP's procedures and compliance with Nevada law;
7. Exclude or disregard evidence concerning MediWaste's investment, expected revenue, business hardship, or operational delay when offered as proof that NDEP complied with its legal obligations;
8. Preserve Appellant's right to object to evidence, testimony, or argument that exceeds MediWaste's proper role as intervenor;
9. Permit Appellant to respond to any new argument or evidence submitted by MediWaste; and
10. Grant such other relief as the Commission determines necessary to protect the fairness and integrity of this appeal.

DATED this 21st day of September, 2026.

Respectfully submitted,

A.J. Brown
Appellant, appearing without counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2026, I transmitted by electronic mail a true and correct copy of Appellant A.J. Brown's Response to Petition for Leave to Intervene and Motion to Clarify and Limit the Scope of Intervention, Evidence, and Argument to:

Sheryl Fontaine
Chief, Bureau of Administrative Services

Nevada Division of Environmental Protection
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The Response and Motion was transmitted to Ms. Fontaine in accordance with her instructions that it could be submitted to her by email for distribution to the appropriate parties.

Dated: September 21, 2026

AJB
A.J. Brown
Appellant, Pro Se