

2 **BEFORE THE STATE ENVIRONMENTAL COMMISSION**

3 **STATE OF NEVADA**

4
5 **In the Matter of the Appeal of A.J. Brown from NDEP's Final Decision Issuing**
6 **Solid Waste Permit SW1900REV00**

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8 **APPELLANT A.J. BROWN'S OPENING BRIEF**

9
10 **INTRODUCTION**

11 Appellant A.J. Brown submits this Opening Brief in support of his appeal from the
12 Nevada Division of Environmental Protection's final decision issuing Solid Waste Permit
13 SW1900REV00 for the MediWaste medical waste treatment facility in Pahrump,
14 Nevada.

15 This appeal concerns whether NDEP completed the evaluation required by Nevada law
16 before issuing the final permit and whether the administrative record and public review
17 process adequately addressed the substantive operating, environmental, emergency
18 response, waste management, and regulatory issues presented by the permitted facility.

19 The thirteen Grounds that follow address distinct aspects of that decision. Although
20 several Grounds involve related facts, each presents a separate question concerning
21 the completeness of NDEP's evaluation, the adequacy of public review, the relationship
22 between the final permit and other governmental approvals, or the enforceability and
23 completeness of the conditions governing the permitted operation.

1 Appellant respectfully requests that the Commission review NDEP's final decision based
2 upon the administrative record, the applicable Nevada statutes and regulations, and the
3 specific issues set forth below.

4

1 **GROUND ONE**

2 NDEP Issued the Final Permit While Substantive Components of the Compliance
3 Evaluation Remained Unresolved

4 The central issue in Ground One is not simply that SW1900REV00 contains
5 requirements that must be satisfied before MediWaste begins operations. The issue is
6 whether NDEP completed the compliance evaluation required by Nevada law before
7 beginning public review and issuing the final permit when substantive components of
8 the permitted operation remained TBD or deferred for later submission, development
9 and approval.

10 NAC 444.641 establishes a sequence. NDEP first determines whether an application is
11 complete. If complete, NDEP must then “evaluate the merits of the application to
12 determine if the application is in compliance with all applicable statutes and regulations.”
13 NAC 444.641(2). Only upon completion of that evaluation does NDEP proceed to the
14 notice of intent, fact sheet and public review process. NAC 444.641(3).

15 That sequence matters.

16 The final permit itself demonstrates that significant portions of the operating record
17 remained unresolved when NDEP issued SW1900REV00.

18 Table 5 is expressly entitled:

19 “Hydrated Ash Waste Sampling Schedule [TBD]”

20 and identifies five sampling stages without establishing the sampling frequencies or
21 durations for those stages.

22 The Schedule of Compliance also requires future submission, completion or approval of
23 matters including:

- an Ash Sampling Frequency Plan;
- an Ash Characterization Plan;
- financial assurance estimates and mechanisms;
- wind related operational limitations or controls;
- dust generation, accumulation and ignition risk controls;
- emergency action planning;
- fire suppression provisions;
- 24-hour hazardous material response provisions;
- coordination with local fire departments and first responders;
- SPCC/SWPP requirements;
- containment details;
- local approvals; and
- other pre operational Schedule of Compliance requirements.

Some of these requirements must be submitted and approved before MediWaste may begin operations.

Appellant does not contend that every document required after permit issuance must necessarily be completed before a permit can be issued. Nor does Appellant contend that a permit may never contain conditions that must be satisfied before operation.

The issue is narrower.

Which of these deferred matters are merely administrative implementation details, and which establish substantive operating, monitoring, safety, environmental, emergency response or financial assurance requirements that should have been part of NDEP's

1 compliance evaluation before NDEP declared that evaluation complete and opened the
2 permit for public review?

3 The ash requirements illustrate the distinction.

4 SW1900REV00 establishes a compliance limit for PCDD/Fs in solid ash residue of 20
5 ng TEQ/kg dry weight and identifies EPA Method 8290A for analysis. The permit
6 therefore establishes an analytical standard.

7 What remained unresolved was a different and significant part of the monitoring
8 program.

9 Table 5 identifies five sampling stages without establishing the sampling frequencies or
10 durations for those stages. The Schedule of Compliance separately requires MediWaste
11 to submit an Ash Sampling Frequency Plan and an Ash Characterization Plan before
12 operations.

13 The permit also prohibits off site disposal of ash until at least one representative sample
14 from each pyrolysis unit has been submitted as required. Those provisions establish
15 important safeguards, but they do not supply the sampling frequencies and durations
16 expressly left TBD in Table 5.

17 The separate air permit does not resolve that omission. AP4953-4771 contains air
18 emissions performance testing and other monitoring requirements applicable to the air
19 permit, but those requirements do not establish the sampling frequencies and durations
20 left TBD in the solid waste permit's Hydrated Ash Waste Sampling Schedule.

21 The issue is therefore not whether NDEP established an analytical method or numerical
22 PCDD/F standard. It did.

1 The issue is whether NDEP could complete its compliance evaluation under NAC
2 444.641, proceed through public review, and issue a final permit while the frequency
3 and duration of the ash sampling program and substantive details of the required Ash
4 Sampling Frequency Plan and Ash Characterization Plan remained subject to later
5 submission and approval.

6 Financial assurance presents a similar issue.

7 The Schedule of Compliance requires financial assurance information to be established
8 through later submissions. If the amount, mechanism or supporting calculation
9 remained unresolved when SW1900REV00 was issued, the question is what NDEP
10 actually evaluated before determining that the application complied with the applicable
11 requirements.

12 The same distinction applies to emergency action planning, fire suppression, hazardous
13 material response, first responder coordination, wind related operating limitations, dust
14 and ignition controls and containment provisions.

15 Some aspects of these subjects may already be addressed elsewhere in the regulatory
16 record, including the separate air permitting record. Ground One therefore does not
17 assert that every safety, combustion or emissions requirement was absent when
18 SW1900REV00 was issued.

19 Rather, Ground One asks the Commission to identify which substantive requirements
20 were actually established and evaluated before public review and final issuance, and
21 which remained to be created or materially completed afterward.

22 That distinction is particularly important because NDEP's final permitting action had
23 immediate legal consequences.

1 The public comment period ended. NDEP issued its Response to Comments. NDEP
2 issued SW1900REV00 as its final decision on August 31, 2026. The administrative
3 appeal period then began.

4 The result is a fundamental finality problem:

5 NDEP treated the permitting process as sufficiently complete to conclude public review,
6 issue a final permit and begin the administrative appeal process while portions of the
7 substantive operating and compliance record remained unfinished and subject to later
8 NDEP approval.

9 The question is not merely whether MediWaste is prohibited from operating until those
10 requirements are satisfied. Preventing operation does not answer whether the
11 requirements should have existed earlier in the regulatory process.

12 NAC 444.641 provides for public review after completion of NDEP's compliance
13 evaluation. NAC 444.6415 then gives interested persons the opportunity to comment or
14 request a public hearing. NAC 444.6419 requires NDEP to respond to written comments
15 received during that review. NAC 444.6425 thereafter provides for issuance or denial of
16 the permit following public review.

17 Those provisions establish an ordered process:

18 Compliance evaluation completed. Public review. Public comment and hearing
19 opportunity. Response to comments. Final permitting decision.

20 If substantive components of the compliance evaluation are instead completed after the
21 final permit is issued, the order is materially different:

22 Public review occurs. The permit becomes final. Appeal rights attach. Substantive
23 requirements are developed or completed afterward.

1 That difference affects more than timing.

2 A member of the public cannot meaningfully comment upon a sampling frequency that
3 has not been established, an emergency response arrangement that has not been
4 completed, a wind operating limitation that has not been determined, or a financial
5 assurance mechanism that has not been selected.

6 Likewise, an appellant cannot meaningfully challenge the substance of a later
7 requirement during the appeal period for the original permit when that requirement did
8 not yet exist.

9 NAC 444.6435 recognizes that certain substantive permit modifications may receive
10 public notice and review, including substantive changes to monitoring procedures and
11 financial assurance mechanisms. But the possibility of a later permit modification does
12 not establish that every deferred Schedule of Compliance approval will constitute such a
13 modification or receive equivalent public review.

14 That leaves a critical unanswered question:

15 For each substantive requirement deferred until after issuance of SW1900REV00, when
16 does the public receive the notice, access, comment, hearing and appeal opportunity
17 that would have existed had the requirement been established before NDEP completed
18 its compliance evaluation and opened the permit for public review?

19 Appellant respectfully requests that the Commission determine:

- 20 1. Which substantive operating, monitoring, environmental, safety, emergency
21 response and financial assurance requirements remained TBD, deferred or
22 subject to later NDEP approval when NDEP completed its evaluation under NAC
23 444.641;

2. Which deferred requirements NDEP considered merely administrative or ministerial and which required substantive technical judgment or approval;
3. What objective criteria NDEP applied in determining that the application complied with all applicable statutes and regulations notwithstanding those unresolved matters;
4. What evidence in the administrative record demonstrates that NDEP completed the compliance evaluation required by NAC 444.641 before beginning public review;
5. What sampling frequencies and durations NDEP evaluated for the Hydrated Ash Waste Sampling Schedule identified as “[TBD]” in the final permit;
6. What Ash Sampling Frequency Plan and Ash Characterization Plan NDEP evaluated before permit issuance;
7. What financial assurance amount, calculation and mechanism NDEP evaluated before determining that the applicable requirements were satisfied;
8. Which emergency action, fire suppression, hazardous material response, first responder coordination, wind, dust, ignition and containment requirements were substantively established before permit issuance and which remained subject to later development or approval;
9. Which deferred requirements will receive public notice and review under NAC 444.6435 or another provision of Nevada law;
10. For any substantive deferred requirement that will not receive renewed public review, what procedure allows an interested person to review, comment upon,

1 request a hearing concerning and challenge that later substantive determination;
2 and

3 11. How NDEP could treat SW1900REV00 as sufficiently final to conclude public
4 review and begin the administrative appeal process while substantive portions of
5 the operating and compliance record remained subject to later development and
6 approval.

7 If NDEP had completed the substantive evaluations identified above before issuing
8 SW1900REV00, Appellant respectfully requests identification of the evidence in the
9 administrative record establishing those determinations.

10 If those evaluations instead depend upon plans, standards, calculations, limitations or
11 other substantive information to be submitted or developed after permit issuance,
12 Appellant respectfully requests that the Commission determine how NDEP's compliance
13 evaluation could have been complete under NAC 444.641 before public review and final
14 permit issuance.

15 Under NRS 233B.135(3), agency action may be set aside when, among other grounds,
16 it is affected by error of law, made upon unlawful procedure, clearly erroneous in view of
17 the reliable, probative and substantial evidence in the whole record, or arbitrary or
18 capricious or characterized by abuse of discretion.

19 Appellant therefore respectfully requests that the Commission reverse NDEP's final
20 decision issuing SW1900REV00 if the Commission determines that NDEP issued the
21 permit before completing the substantive compliance evaluation required by Nevada
22 law.

1 If the Commission elects to remand rather than reverse, Appellant further requests that
2 SW1900REV00 be held in abeyance, or that the Commission impose such other relief
3 within its stated authority as is necessary to prevent MediWaste from commencing
4 operations until the matters requiring remand have been completed and any required
5 public review has occurred.

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1 **GROUND TWO**

2 Deferred Approvals Deprive the Public of Meaningful Review, Comment, Hearing and
3 Appeal

4 Ground One addresses whether NDEP completed the substantive compliance
5 evaluation required before public review and final permit issuance.

6 Ground Two addresses the corresponding consequence for the public when substantive
7 portions of that evaluation are deferred until after the public review process has ended
8 and the permit has become final.

9 Nevada's permitting process provides for public notice, access to application materials,
10 a public comment period, requests for a public hearing, responses to comments, a final
11 permitting decision and an opportunity to appeal that decision.

12 Those protections lose much of their meaning if substantive operating standards are
13 established only after the public review period has closed.

14 NAC 444.641 establishes the sequence under which NDEP determines completeness,
15 evaluates the merits of the application for compliance with applicable statutes and
16 regulations and, upon completion of that evaluation, proceeds to public review.

17 NAC 444.6415 provides interested persons an opportunity to submit comments and
18 request a public hearing.

19 NAC 444.6419 requires NDEP to respond to written comments received during that
20 process.

21 NAC 444.6425 thereafter provides for issuance or denial of the permit following
22 completion of the public review process.

1 Finally, NAC 444.748 provides the mechanism by which a person aggrieved by a final
2 decision concerning a solid waste management facility permit may appeal that decision
3 to the State Environmental Commission.

4 These provisions create an integrated process in which public participation occurs
5 before the permitting decision becomes final and appeal rights attach afterward.

6 That sequence is reinforced by NAC 444.638. Nevada's solid waste regulations may not
7 be interpreted to circumvent any of their provisions so as to make them less effective.
8 NAC 444.638(1). Where more than one interpretation exists, the more restrictive
9 interpretation applies. NAC 444.638(2).

10 The problem presented by SW1900REV00 is that substantive portions of the operating
11 and compliance record remain unfinished after that sequence has already occurred.

12 As described in Ground One, the final permit itself identifies requirements that remain
13 “[TBD]” or subject to later submission, development and NDEP approval. Those include
14 portions of the ash sampling and characterization program, financial assurance,
15 emergency planning, fire suppression, hazardous material response, first responder
16 coordination, wind related operating limitations, dust and ignition controls, containment
17 requirements and other Schedule of Compliance matters.

18 Nevada's regulations provide a useful distinction between routine administrative matters
19 and substantive permit changes.

20 NAC 444.6395(4) expressly provides that “Routine technical corrections and
21 administrative updates shall not be deemed to be substantive modifications to permits”
22 for purposes of the applicable permit modification fee. NDEP's own Solid Waste Fee
23 Schedule repeats that distinction, separating routine technical corrections and

administrative updates from modifications that require public notice and review pursuant to NAC 444.6435.

NAC 444.6435 further identifies the types of permit changes that may warrant public notice and 30 days of public review. Those include an increase in the amount or type of solid waste inconsistent with permitted design, operational plans or municipal solid waste plans; a change in the manner of waste management inconsistent with permitted design or operational plans; and substantive changes to identified permit components, including monitoring and corrective action procedures and financial assurance mechanisms.

Those regulatory categories are directly relevant here.

Several matters deferred by SW1900REV00 concern monitoring, characterization, corrective action, financial assurance, emergency response and substantive operating limitations. More importantly, these are not merely documents that MediWaste files for NDEP's records. The permit requires substantive plans and other matters to be submitted, reviewed and approved by NDEP before MediWaste may commence operations.

An approval upon which legal authority to begin operation depends is materially different from correcting a typographical error or making a routine administrative update.

If NDEP must exercise technical judgment and affirmatively approve a plan, procedure, limitation, financial assurance mechanism or other requirement before MediWaste is legally permitted to operate, the Commission should determine on what basis that later determination could be characterized as merely a routine technical correction or administrative update rather than a substantive regulatory determination.

1 Appellant does not contend that every deferred submission automatically constitutes a
2 substantive permit modification under NAC 444.6435. Rather, Nevada's own regulations
3 establish a distinction that requires examination of the substance of the later
4 determination, not merely the fact that NDEP placed it in a Schedule of Compliance for
5 completion after permit issuance.

6 If NDEP considers any of these later approvals to be routine technical corrections or
7 administrative updates, the administrative record should identify the legal and technical
8 basis for that classification, particularly where the deferred matter concerns a category
9 that Nevada regulations themselves recognize as capable of constituting a substantive
10 permit change.

11 The public cannot know the substance of a requirement that does not yet exist.

12 A document, standard, plan, threshold or operating condition that does not yet exist
13 cannot be meaningfully reviewed, commented upon or challenged during the present
14 appeal period.

15 The final permit does not identify a guaranteed procedure under which every
16 substantive later submission will receive:

- 17 • public notice;
- 18 • public access before NDEP approval;
- 19 • a new public comment period;
- 20 • an opportunity for a public hearing;
- 21 • NDEP responses to those comments; and
- 22 • a renewed opportunity to challenge the resulting substantive decision.

1 A later permit modification may under certain circumstances receive public notice and
2 review under NAC 444.6435. But that possibility does not establish that every
3 substantive Schedule of Compliance approval will constitute a permit modification or
4 receive those protections.

5 That distinction creates a procedural gap.

6 If a deferred requirement is sufficiently substantive to have been part of NDEP's
7 compliance evaluation and the public permitting record, but NDEP later approves it
8 administratively without renewed public review, where did the public's opportunity to
9 participate in that unfinished portion of the permitting process go?

10 The problem continues into the appeal process.

11 NAC 444.748 allows an aggrieved person to appeal NDEP's final permitting decision.

12 But meaningful review requires something to review.

13 How could an interested person meaningfully appeal the final permit concerning an
14 essential operating component that had not yet been determined when the permit
15 became final and the appeal period began?

16 An appellant cannot identify a substantive defect in a sampling frequency that has not
17 been established. The public cannot challenge the adequacy of an emergency response
18 requirement that has not been completed. An interested person cannot evaluate a
19 financial assurance mechanism that has not been selected or a wind related operating
20 limitation that has not yet been determined.

21 If those substantive decisions are made later, after the appeal from the original permit
22 has concluded, the public should not be left without an equivalent opportunity to review
23 and challenge them.

1 Otherwise, the regulatory sequence effectively becomes:

2 An essential operating component remains unresolved. NDEP nevertheless treats its
3 evaluation as complete. Public review occurs without that component. NDEP responds
4 to the comments it could receive on the incomplete record. The final permit is issued.
5 Appeal rights attach to that final decision. The missing operating component is
6 determined afterward.

7 That is materially different from the sequence established by NAC 444.641 through
8 NAC 444.6425, under which NDEP's compliance evaluation precedes meaningful public
9 review and final permit issuance.

10 It would also raise the question whether an interpretation allowing substantive portions
11 of the compliance determination to bypass that sequence makes the public review
12 provisions less effective contrary to NAC 444.638.

13 There is an additional local government consequence if a later substantive approval
14 materially changes the operation reviewed and approved by Nye County.

15 NRS 444.570(1)(a) provides that the State Department of Conservation and Natural
16 Resources shall advise, consult and cooperate with municipalities in the formulation of
17 plans for and establishment of any solid waste management system. Nevada law also
18 preserves local authority to establish standards concerning the location, design,
19 construction, operation and maintenance of solid waste management systems. NRS
20 444.580.

21 NAC 444.6435 itself recognizes the significance of municipal solid waste plans by
22 identifying an increase in the amount or type of solid waste inconsistent with permitted

1 design, operational plans or municipal plans concerning the management of solid waste
2 as a type of modification that may be subject to public notice and review.

3 Accordingly, if a deferred or later approved change materially alters the facility or its
4 operation from the project previously reviewed under the County's Conditional Use
5 Permit, the issue is not merely whether NDEP can approve that change after issuance
6 of SW1900REV00.

7 The additional question is whether NDEP's statutory obligation to advise, consult and
8 cooperate with local government requires referral or consultation with Nye County so
9 that the County can determine whether the changed operation remains within the CUP
10 previously approved or requires further local review.

11 That determination carries consequences for public participation. Nevada land use law
12 provides public hearing, notice and appeal procedures for conditional use permits and
13 other special exceptions. NRS 278.315; NRS 278.3195.

14 Ground Two does not attempt to determine whether the changes to MediWaste actually
15 require a new or modified County CUP. The factual and regulatory differences between
16 the project originally reviewed by the County and the facility ultimately permitted by
17 NDEP are addressed more fully in Grounds Seven and Twelve.

18 The point here is procedural.

19 If a substantive later approval changes the facility sufficiently to require renewed County
20 review, allowing that change to occur solely through post-permit NDEP approval could
21 bypass not only the State public review process but also the notice, hearing and appeal
22 opportunities that would accompany applicable local review.

1 Preventing MediWaste from commencing operations until NDEP approves the deferred
2 requirements does not resolve these procedural problems.

3 That restriction protects against operation before NDEP approval.

4 It does not establish when or how the public participates in NDEP's later substantive
5 determination, or whether a materially changed operation must return to the County for
6 whatever local review Nevada law requires.

7 Nor does conducting a hearing during this appeal necessarily cure the problem. The
8 Commission and the public cannot meaningfully evaluate the substance of a plan,
9 threshold, standard or operating limitation that still does not exist.

10 A hearing conducted before the missing information exists does not cure the problem.

11 Appellant therefore requests more than a hearing concerning the incomplete record
12 presently available.

13 Appellant requests that the substantive deferred plans, standards, thresholds and
14 procedures necessary to complete the permitting record first be obtained and disclosed.

15 The public should then receive a meaningful opportunity to review and comment upon
16 that completed record.

17 A public hearing should follow that disclosure and review, not precede it.

18 NDEP should thereafter respond to the resulting comments as required by law and
19 make a new final permitting determination from which affected persons can exercise
20 meaningful appeal rights.

21 Appellant respectfully requests that the Commission determine:

- 22 1. Which deferred requirements under SW1900REV00 will receive public notice and
23 review before NDEP approval;

2. Which deferred requirements NDEP intends to approve without renewed public notice or comment;
3. Which deferred requirements NDEP considers routine technical corrections or administrative updates and the legal and technical basis for each such classification;
4. Which deferred requirements constitute or may constitute substantive regulatory determinations or substantive permit modifications, particularly where they concern monitoring, corrective action, financial assurance, waste management practices or other matters identified in NAC 444.6435;
5. What legal standard NDEP uses to determine whether a deferred approval constitutes a substantive permit modification that may be subject to public review under NAC 444.6435;
6. Whether the public will have access to each substantive deferred plan, standard, threshold or procedure before NDEP approves it;
7. Whether interested persons will have an opportunity to comment upon those substantive materials before approval;
8. Whether interested persons may request a public hearing concerning those later substantive determinations;
9. Whether NDEP will respond to public comments concerning those matters before approving them;
10. What right exists under NAC 444.748 or other Nevada law to challenge a substantive requirement established after the original permit has already become final;

1 11. How an interested person could meaningfully exercise the present appeal right
2 concerning a substantive operating requirement that did not exist when the
3 appeal period began;

4 12. If no equivalent public review and appeal procedure exists for a substantive
5 deferred approval, where in the permitting process the public receives the
6 participation rights that would have existed had that requirement been completed
7 before NDEP's compliance evaluation, public review and final permit decision;
8 and

9 13. If a deferred or later approved substantive change materially alters the operation
10 reviewed under the existing County CUP, whether NDEP must advise, consult or
11 cooperate with Nye County under NRS 444.570(1)(a) so that the County can
12 determine whether further local review is required and, if so, whether the public
13 receives the notice, hearing and appeal opportunities applicable to that local
14 review.

15 The issue is not whether NDEP may ever require additional submissions after permit
16 issuance.

17 The issue is whether substantive portions of the permitting decision may be moved
18 beyond the public review and appeal process without providing an equivalent
19 opportunity for meaningful public participation and review.

20 NAC 444.641 uses mandatory language requiring the solid waste management
21 authority to evaluate the merits of a complete application for compliance and, upon
22 completion of that evaluation, to proceed with the public permitting process. The
23 regulations then establish the public comment, response and final decision sequence.

1 NAC 444.638 further provides that those regulations may not be interpreted to
2 circumvent their provisions so as to make them less effective.
3 If substantive deferred requirements were necessary components of that compliance
4 evaluation, the Commission should determine whether NDEP could lawfully complete
5 public review and issue its final permitting decision before those substantive
6 determinations were made.

7 If the Commission determines that substantive components of the permitting decision
8 were deferred beyond the public review and appeal process without preserving
9 meaningful public participation and review, Appellant respectfully requests that the
10 Commission reverse NDEP's final decision.

11 If the Commission elects to remand rather than reverse, Appellant further requests that
12 SW1900REV00 be held in abeyance, or that the Commission impose such other relief
13 within its stated authority as is necessary to prevent MediWaste from commencing
14 operations until the deferred substantive matters have been completed, disclosed and
15 subjected to any public or local review required by Nevada law.

GROUND THREE

Emergency Response Planning and Coordination Do Not Establish Actual Local Response Capability

SW1900REV00 requires MediWaste, before operations commence, to provide emergency planning information to local responders and to demonstrate coordination concerning emergency action, fire suppression and 24 hour hazardous material response.

Those requirements recognize that emergency preparedness is a necessary component of the permitted operation.

But the timing creates a substantial regulatory problem.

NDEP issued the final permit before the emergency response requirements identified in the Schedule of Compliance were completed. Public review ended, the final permit was issued and the administrative appeal period began while important emergency response matters remained deferred until the pre-operation period.

That sequence matters because coordination is not the same thing as demonstrated response capability.

Providing an emergency plan to a fire department does not establish that the fire department has the personnel, training, protective equipment, apparatus, hazardous material capability, decontamination capability or other resources necessary to execute that plan.

Likewise, evidence that MediWaste communicated or coordinated with local responders does not establish that the resulting emergency arrangements are adequate or effective.

1 A plan can exist on paper. Coordination can occur. Neither establishes that the
2 response described in the plan can actually be performed.

3 The distinction is particularly important where NDEP has made emergency action
4 planning, fire suppression, hazardous material response and coordination with local first
5 responders prerequisites to operation.

6 If these matters were sufficiently important that MediWaste cannot operate until the
7 applicable pre-operation requirements have been satisfied, the Commission should
8 determine what NDEP actually evaluated concerning emergency response capability
9 before it issued the final permit.

10 NAC 444.644(1)(a) requires solid waste to be stored, collected, utilized, treated,
11 processed and disposed of by means that do not create a health hazard, public
12 nuisance or impairment of the environment.

13 NAC 444.644(3) further provides that no solid waste handling or processing system may
14 be placed in operation unless approved by the solid waste management authority.

15 NAC 444.668 similarly requires processing systems to be designed, constructed and
16 operated so as not to create health hazards, public nuisances or impairment of the
17 environment.

18 NRS 444.592 addresses circumstances in which the handling, storage, transportation,
19 treatment or disposal of solid waste presents or may present a threat to human health,
20 public safety or the environment and authorizes preventive action.

21 NDEP's own solid waste reporting requirements further recognize fires, explosions,
22 releases, injuries and actual or potential hazards to human health or the environment as
23 matters requiring regulatory attention when they occur at solid waste facilities.

1 These provisions do not establish that Nye County must maintain any particular number
2 of responders, any particular apparatus or any specific level of hazardous material
3 capability solely because MediWaste received a solid waste permit.

4 They do establish that protection of human health, public safety and the environment is
5 not collateral to the permitting decision.

6 Nevada's broader hazardous materials emergency planning framework reinforces the
7 distinction between possessing an emergency plan and possessing an effective
8 emergency response capability.

9 Nevada law expressly addresses governmental evaluation of the adequacy and
10 effectiveness of plans for response to emergencies involving hazardous materials.

11 Nevada's State Emergency Response Commission framework also provides for
12 emergency planning, responder training, preparedness and improvement of local
13 capability. NRS Chapter 459.

14 Appellant does not contend that those provisions independently establish the permitting
15 standard governing SW1900REV00. They are relevant supporting authority because
16 they demonstrate that Nevada itself recognizes a distinction between the existence of
17 emergency plans and the adequacy and effectiveness of the response those plans are
18 intended to produce.

19 Federal emergency planning guidance reflects the same practical distinction. EPA's
20 emergency planning framework addresses local emergency equipment and facilities,
21 responsible personnel, responder training, emergency procedures and exercises.

Again, Appellant does not contend that every provision of that federal framework independently governs issuance of SW1900REV00. It provides additional support for the basic emergency planning principle at issue here:

An emergency response plan is meaningful only if the personnel, equipment, training, facilities and continuing capability necessary to execute it are actually available.

The administrative record should therefore establish whether Nye County's responding agencies presently possess the:

trained personnel;

appropriate personal protective equipment;

specialized hazardous material response capability;

decontamination capability;

fire suppression resources;

specialized equipment and apparatus;

sufficient staffing;

necessary training; and

continuing readiness

necessary to respond to the facility as finally permitted.

That final qualification is important.

The facility ultimately permitted by NDEP includes seven pyrolysis units, natural gas fired burners and thermal oxidizers, medical waste storage and processing, pathological waste, ash handling and other operational characteristics relevant to the types of emergencies for which response planning may be necessary.

1 Appellant does not contend that these features establish that an emergency will occur.
2 Nor does Appellant ask the Commission to speculate about emergencies unsupported
3 by the record.

4 The issue is whether NDEP identified the reasonably foreseeable emergencies
5 associated with the operation it actually permitted, determined what response capability
6 those emergencies could require and established whether that capability is actually
7 available.

8 If NDEP did not determine what capability is necessary, it could not determine whether
9 the available capability is adequate. If NDEP did determine what capability is necessary,
10 the administrative record should identify that determination and the evidence supporting
11 it.

12 The financial consequence must also be addressed.

13 If operation of this private commercial facility requires Nye County to purchase
14 specialized equipment, provide additional hazardous material or fire and emergency
15 medical training, increase staffing, acquire protective or decontamination equipment,
16 maintain specialized response capability or otherwise increase emergency
17 preparedness, those costs do not disappear simply because they are incurred by local
18 government.

19 If MediWaste is not responsible for those additional costs, the financial burden may
20 ultimately fall upon Nye County and its taxpayers.

21 Appellant does not contend that Nevada solid waste law necessarily requires
22 MediWaste to pay every governmental emergency response cost associated with its
23 operation.

1 The issue is whether the facility requires emergency response capabilities that do not
2 presently exist and, if so, whether NDEP identified those requirements, determined how
3 they would be satisfied and established who would be responsible for providing and
4 maintaining them.

5 Those questions should not first be answered during an actual emergency.

6 More fundamentally, the permit's decision to defer emergency response matters creates
7 the same public participation problem addressed in Ground Two.

8 NDEP issued the final permit first. Public review ended. Appeal rights attached. Yet
9 portions of the emergency response arrangements upon which operation depends
10 remained for later completion, coordination or demonstration before MediWaste begins
11 operations.

12 If NDEP's later pre-operation determination requires evaluating whether an emergency
13 action plan is adequate, whether fire suppression arrangements are sufficient, whether
14 24-hour hazardous material response is actually available or whether coordination with
15 local responders establishes a workable response capability, those are not merely
16 routine technical corrections or administrative updates.

17 They require substantive judgment concerning human health and public safety.

18 The public cannot meaningfully evaluate the adequacy of an emergency arrangement
19 that has not yet been completed.

20 The public cannot determine whether local responders possess the resources
21 necessary to execute a plan that remains subject to later coordination.

1 And an appellant cannot meaningfully challenge NDEP's substantive evaluation of
2 emergency response capability during the appeal from the original permit if NDEP has
3 not yet made that evaluation.

4 The public therefore faces the same procedural gap identified in Ground Two: an
5 important health and safety determination may occur after public review has ended,
6 after the permit has become final and after the appeal period concerning that permit has
7 begun.

8 Preventing MediWaste from operating until the deferred emergency requirements are
9 satisfied does not cure that problem.

10 That restriction prevents premature operation.

11 It does not restore the public's opportunity to review, comment upon and, where
12 authorized by law, challenge the substantive emergency response determination when
13 that determination is finally made.

14 Requiring MediWaste merely to provide emergency plans and evidence of coordination
15 therefore does not answer the central questions presented by Ground Three.

16 Appellant respectfully requests that the Commission determine:

- 17 1. What fires, hazardous material incidents, equipment failures, releases,
18 exposures or other emergencies NDEP considered reasonably foreseeable for
19 the facility as finally permitted;
- 20 2. What personnel, training, personal protective equipment, hazardous material
21 capability, decontamination capability, fire suppression resources, specialized
22 equipment, apparatus, staffing and continuing readiness NDEP determined are
23 reasonably necessary to respond to those emergencies;

- 1 3. Whether Nye County's responding agencies presently possess that capability;
- 2 4. What evidence establishes not merely that MediWaste provided plans to local
- 3 responders or coordinated with them, but that the personnel, equipment, training,
- 4 facilities and continuing response capability necessary to execute those plans
- 5 are actually available;
- 6 5. Whether NDEP determined that Nye County's existing emergency response
- 7 capability is adequate for the risks NDEP identified for the facility and, if so, what
- 8 objective evidence supports that determination;
- 9 6. Whether the emergency action plan, fire suppression provisions, 24-hour
- 10 hazardous material response provisions and required first responder coordination
- 11 require substantive review or approval by NDEP before MediWaste may
- 12 commence operations;
- 13 7. Whether NDEP's required evidence of coordination establishes merely that
- 14 communication or coordination occurred, or whether it must demonstrate the
- 15 adequacy and effectiveness of the resulting emergency response arrangements;
- 16 8. If additional equipment, training, staffing, protective equipment, decontamination
- 17 capability, hazardous material capability, fire suppression resources or other
- 18 emergency preparedness is required because of the facility, what additional
- 19 capability is required and when must it be available;
- 20 9. Who is responsible for acquiring, funding, maintaining and replacing any
- 21 additional emergency response resources required because of the facility;

1 10. Whether any additional governmental cost associated with establishing or
2 maintaining that capability will be borne by MediWaste, Nye County or another
3 entity;

4 11. What substantive emergency response requirements remained deferred when
5 NDEP issued SW1900REV00 and what emergency response capability NDEP
6 had actually evaluated at the time it completed the compliance evaluation
7 required by NAC 444.641;

8 12. If NDEP's determination concerning the adequacy or effectiveness of emergency
9 planning, fire suppression, hazardous material response or local response
10 capability occurs after final permit issuance, whether that determination
11 constitutes a substantive regulatory approval rather than a routine technical
12 correction or administrative update; and

13 13. If substantive emergency response arrangements or determinations are
14 completed after final permit issuance, when and how the public receives the
15 notice, access, review, comment, hearing and appeal opportunities that would
16 have existed had those matters been completed before public review and
17 issuance of SW1900REV00.

18 The issue is not simply whether MediWaste has an emergency plan or whether local
19 responders have been contacted. Coordination is not demonstrated capability. The
20 issue is whether NDEP identified the emergency response reasonably required by the
21 facility it permitted, determined whether the personnel, training, equipment and
22 resources necessary to execute that response actually exist, and completed that

determination before treating its compliance evaluation as complete and issuing the final permit.

If NDEP completed that evaluation before issuing SW1900REV00, Appellant respectfully requests identification of the evidence and objective criteria supporting that determination.

If the evaluation instead depends upon emergency plans, coordination, equipment, training, responder capability or other substantive matters to be established after permit issuance, Appellant respectfully requests that the Commission determine how NDEP's compliance evaluation could have been complete before public review and final permit issuance and where the public receives meaningful review of the later determination.

Under NRS 233B.135(3), agency action may be set aside when, among other grounds, it is affected by error of law, made upon unlawful procedure, clearly erroneous in view of the reliable, probative and substantial evidence in the whole record, or arbitrary or capricious or characterized by abuse of discretion.

If the Commission determines that NDEP issued SW1900REV00 before completing an emergency response determination required by Nevada law, Appellant respectfully requests that the Commission reverse NDEP's final decision or remand the matter to NDEP for completion of that determination.

If the Commission elects to remand rather than reverse, Appellant further requests that SW1900REV00 be held in abeyance, or that the Commission impose such other relief within its stated authority as is necessary to prevent MediWaste from commencing operations until the emergency response capability necessary for operation has been

1 demonstrated, the matters requiring remand have been completed, and any public
2 review required by Nevada law has occurred.

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GROUND FOUR

NDEP's Evaluation Should Address Whether the Medical-Response Pathway Necessary for a Serious Facility Emergency Is Complete and Actually Available

Ground Four addresses a specific component of the emergency-preparedness issue presented in Ground Three: what happens after a serious injury, burn, hazardous-material exposure or other traumatic event occurs at the MediWaste facility.

SW1900REV00 requires emergency planning, fire-suppression provisions, 24-hour HazMat response provisions and coordination with local fire and first responders before operations may commence.

Those requirements recognize that emergency response is a necessary component of operation. But arrival of an emergency responder at the facility does not complete the response to a serious medical event. A seriously injured or exposed person may require stabilization, transportation, specialized treatment, transfer to a higher level of care, or trauma treatment.

That raises a straightforward question:

What medical-response pathway did NDEP evaluate for a serious or traumatic event at this facility, and was that pathway complete when SW1900REV00 was issued?

NAC 444.644(1)(a) requires solid waste to be stored, collected, utilized, treated, processed and disposed of by means that do not create a health hazard, public nuisance or impairment of the environment. NAC 444.644(3) further provides that no solid-waste handling or processing system may be placed in operation unless approved by the solid waste management authority.

1 NRS 444.592 likewise addresses circumstances in which the handling, storage,
2 transportation, treatment or disposal of solid waste presents or may present a threat to
3 human health, public safety or the environment and authorizes preventive action.

4 Nevada law also recognizes emergency and accident planning in other regulatory
5 contexts. For example, Nevada occupational-safety law requires covered employers to
6 maintain workplace safety programs addressing accidents and corrective action.

7 Appellant does not contend that those separate requirements independently establish
8 the standard governing issuance of SW1900REV00. They do, however, reinforce the
9 practical distinction between identifying an emergency and having an actionable
10 response when one occurs.

11 The controlling question here remains whether NDEP's solid-waste evaluation
12 adequately addressed the human-health and public-safety consequences of the
13 operation it permitted.

14 Appellant does not contend that NDEP must provide ambulances, hospitals, trauma
15 centers or other medical services, nor that every permitted industrial facility must be
16 located adjacent to specialized medical care.

17 The issue is narrower:

18 If a traumatic injury, serious burn, hazardous-material exposure or other medical
19 emergency is a reasonably foreseeable consequence addressed by the facility's
20 emergency planning, what action plan identifies the medical response following the
21 incident, including stabilization, emergency transportation, receiving medical capability
22 and transfer to a higher level of care when necessary?

1 The existence of local emergency medical services or a hospital does not, standing
2 alone, answer that question.

3 The relevant inquiry is:

4 What level of medical care could reasonably be required by the emergencies associated
5 with the permitted operation, where is that care available, how would an injured or
6 exposed person reach it, and was that response pathway evaluated before NDEP
7 issued the final permit?

8 If treatment for a reasonably foreseeable emergency would require transportation
9 outside Pahrump or transfer to a higher level of care, that fact does not necessarily
10 prohibit the facility. It does, however, make transportation capability, response time,
11 receiving-facility capability and coordination relevant to whether the emergency-
12 response pathway is actually workable.

13 The completeness issue is therefore central to Ground Four.

14 If the emergency action planning required before operation does not yet identify what
15 occurs following a serious injury or exposure, including where necessary treatment will
16 be obtained and how the injured person will reach that treatment, what exactly was
17 complete concerning emergency preparedness when NDEP issued the final permit?

18 NAC 444.641 requires NDEP, after determining that an application is complete, to
19 evaluate its merits for compliance with applicable statutes and regulations before
20 proceeding through the public-review process that culminates in final permit issuance.

21 If NDEP had already evaluated the medical-response pathway before issuing
22 SW1900REV00, Appellant respectfully requests identification of the evidence and
23 objective criteria supporting that determination.

1 If that evaluation instead depends upon MediWaste's later emergency planning and
2 coordination before operation may commence, Appellant respectfully requests that the
3 Commission determine how NDEP's compliance evaluation could be complete for
4 purposes of public review and final permit issuance while a substantive component of
5 emergency preparedness remained unresolved.

6 If no medical-response action plan or evaluation of the medical-response pathway is
7 required, Appellant respectfully requests that the Commission identify the statutory,
8 regulatory or permit-specific standard NDEP applied in determining that the emergency
9 arrangements required by SW1900REV00 adequately protect human health and public
10 safety without identifying the response pathway following a serious injury or exposure.

11 Appellant therefore respectfully requests that the Commission determine:

- 12 1. What serious injuries, burns, hazardous-material exposures or other medical
13 emergencies NDEP considered reasonably foreseeable in evaluating
14 SW1900REV00;
- 15 2. What emergency medical, hospital, specialized-treatment or trauma capability
16 NDEP determined could reasonably be required following such an event;
- 17 3. Whether that capability is available locally and, where it is not, what
18 transportation, transfer and receiving-facility pathway NDEP evaluated;
- 19 4. Whether NDEP evaluated response and transport time, emergency medical
20 transportation capability, receiving-facility capability and necessary coordination
21 before issuing the final permit;
- 22 5. Whether a medical-response action plan identifying stabilization, transportation,
23 receiving medical capability and transfer to higher-level care is required before

1 MediWaste may operate and, if not, what standard NDEP applied in determining
2 that such planning was unnecessary;

3 6. How NDEP's compliance evaluation and final permitting decision could be
4 complete if the medical-response component of emergency preparedness
5 remained unfinished and subject to later development, coordination or
6 evaluation; and

7 7. If the substantive medical-response arrangements are established after final
8 permit issuance, when and how the public receives the review, comment and
9 appeal opportunities addressed in Ground Two.

10 The issue is not simply whether an ambulance can respond or whether Pahrump has a
11 hospital. The issue is whether NDEP identified the reasonably foreseeable serious
12 medical consequences of the operation it permitted, determined what response those
13 consequences could require, and evaluated whether a workable medical-response
14 pathway actually existed before completing its compliance evaluation and issuing the
15 final permit.

16 If the Commission determines that NDEP issued SW1900REV00 before completing a
17 medical-response determination required by Nevada law, Appellant respectfully
18 requests that the Commission reverse NDEP's final decision or remand the matter to
19 NDEP for completion of that determination. If the Commission elects to remand rather
20 than reverse, Appellant further requests that SW1900REV00 be held in abeyance, or
21 that the Commission impose such other relief within its stated authority as is necessary
22 to prevent MediWaste from commencing operations until the medical-response

- 1 arrangements necessary for operation have been demonstrated and the matters
- 2 requiring remand have been completed.

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GROUND FIVE

NDEP Issued the Final Permit Without Establishing How the Natural Gas Required by the Permitted Operating Configuration Would Be Supplied

SW1900REV00 relies upon an air-permitted equipment configuration that uses natural gas. Air Quality Operating Permit AP4953-4771 identifies seven pyrolysis units, with four natural-gas-fired burners associated with each unit and a natural-gas-fired thermal oxidizer associated with each unit.

The significance of that configuration is straightforward.

The permitted facility depends upon natural gas for operation of equipment integral to the permitted process and its air-pollution-control configuration.

PUCN information indicates that conventional natural-gas utility service is not available in Pahrump. That fact does not establish that MediWaste cannot obtain natural gas. Natural gas can potentially be transported to the facility, including through CNG or LNG delivery systems.

But that possibility creates rather than resolves the permitting question:

What natural-gas supply method did NDEP actually evaluate before issuing SW1900REV00?

MediWaste may very well have a technically feasible means of supplying natural gas. If so, NDEP should be able to identify that means and the record showing that it was evaluated. If the supply method had not yet been determined when SW1900REV00 was issued, that presents both a completeness problem and a public-participation problem.

Ground Five fits the same recurring pattern presented throughout this appeal: an essential operating component appears unresolved when NDEP treated its evaluation

1 as complete and moved the permit through public review to final issuance. Here,
2 however, the unresolved component concerns the fuel necessary to operate the
3 permitted equipment itself.

4 A facility supplied through an existing natural-gas utility distribution system and a facility
5 dependent upon repeated deliveries of compressed or liquefied natural gas do not
6 necessarily present the same operating configuration.

7 If trucked natural gas was the contemplated source, the permitting record should
8 identify the proposed system and demonstrate what NDEP evaluated concerning the
9 operational and safety consequences of supplying the facility in that manner, including
10 the method of storage and delivery, pressure regulation or vaporization as applicable,
11 and whether the proposed supply system is capable of providing the pressure, flow rate
12 and fuel input required by the permitted burners and thermal oxidizers when operating
13 at the contemplated facility load.

14 It is not enough to establish that a quantity of natural gas can physically be transported
15 to the property. What evidence established that the contemplated fuel-supply system
16 could continuously provide the required natural-gas flow and pressure necessary to
17 operate the permitted equipment at the facility's contemplated operating capacity?

18 AP4953-4771 identifies four 500,000 Btu/hr natural-gas-fired burners for each of seven
19 pyrolysis units and one 2,000,000 Btu/hr natural-gas-fired thermal oxidizer for each unit.

20 The combined rated fuel input of that equipment is therefore substantial. Appellant does
21 not assume that every burner and thermal oxidizer will necessarily operate
22 simultaneously at maximum rated input. The relevant question is what maximum

1 simultaneous fuel demand NDEP contemplated and whether the proposed natural-gas
2 supply system was demonstrated to satisfy that demand.

3 If trucked natural gas was not the contemplated source, the question remains:

4 What natural-gas source and delivery system did NDEP evaluate?

5 NAC 444.641 requires the solid waste management authority, after determining that an
6 application is complete, to evaluate the merits of the application to determine whether it
7 complies with applicable statutes and regulations. Only upon completion of that
8 evaluation does the regulation direct the authority to proceed to the notice of intent, fact
9 sheet and public-review process.

10 NAC 444.644(1)(a) further requires solid waste to be stored, collected, utilized, treated,
11 processed and disposed of by means that do not create a health hazard, public
12 nuisance or impairment of the environment. NAC 444.644(3) provides that no solid-
13 waste handling or processing system may be placed in operation unless approved by
14 the solid waste management authority.

15 The fuel-supply question therefore implicates the same fundamental completeness
16 issue presented elsewhere in this appeal:

17 How could NDEP's evaluation of the permitted operating configuration be complete if
18 NDEP had not determined how the natural gas required by that configuration would
19 actually be supplied to the facility and whether the contemplated supply system could
20 satisfy the operating requirements of the permitted equipment?

21 The issue is also procedural.

1 NAC 444.641 through NAC 444.6425 establish the sequence by which NDEP
2 completes its evaluation, provides public notice, receives public comments and hearing
3 requests, responds to comments, and ultimately issues its final permit decision.
4 That process gives the public an opportunity to evaluate and comment upon the
5 proposed facility before the decision becomes final.
6 If the natural-gas supply method was unknown or unresolved during that process,
7 however, the public could not evaluate the actual operating and safety consequences of
8 that method.
9 If the actual natural-gas supply method was not identified during the public-review
10 proceeding, how could the public evaluate and comment upon its operational and safety
11 consequences? How could NDEP respond under NAC 444.6419 to comments
12 concerning a fuel-supply configuration that had not yet been identified? And how could
13 an interested person meaningfully appeal the final permit concerning an essential
14 operating component that had not yet been determined?
15 This concern becomes more significant if the facility will depend upon regular truck
16 deliveries of natural gas. In that circumstance, fuel transportation and delivery would
17 constitute an ongoing component of facility operation rather than an occasional or
18 emergency event.
19 The precise number of deliveries would depend upon actual fuel consumption, the form
20 in which the natural gas is transported, the delivery capacity and the maximum
21 simultaneous operating demand. Appellant does not ask the Commission to assume a
22 particular CNG or LNG system.
23 Appellant asks the more fundamental question:

1 Did NDEP know and evaluate how MediWaste intended to supply the natural gas
2 required by its permitted configuration before NDEP determined that its evaluation was
3 complete and issued the final permit?

4 If the answer is yes, the administrative record should identify the proposed fuel-supply
5 method, its capacity to meet the contemplated operating demand, and NDEP's
6 evaluation of its operational and safety implications.

7 If the answer is no, then an essential component necessary to operate the permitted
8 facility was left to be determined after NDEP had completed its evaluation, conducted
9 public review and issued the final permit.

10 That produces the recurring sequence challenged throughout this appeal:

11 An essential operating component remains unresolved → NDEP nevertheless treats its
12 evaluation as complete → public review occurs without that component → NDEP
13 responds to the comments it could receive on the incomplete configuration → the final
14 permit is issued → appeal rights attach to that final decision → the missing operating
15 component is determined afterward.

16 A fuel-supply system developed and approved after final permit issuance cannot
17 retroactively provide the public an opportunity to review and comment upon that system
18 before the permit was issued.

19 NAC 444.6435 recognizes that certain substantive changes following permit issuance
20 may require renewed public notice and review. Ground Six separately addresses the
21 consequences of a later substitution of fuel, burners or other equipment configuration.

22 Ground Five presents the preceding question:

1 Was the natural-gas supply configuration sufficiently established and evaluated in the
2 first place?

3 Appellant therefore respectfully requests that the Commission determine:

- 4 1. What evidence NDEP relied upon to establish how natural gas would be supplied
5 to the MediWaste facility;
- 6 2. Whether NDEP knew before issuing SW1900REV00 whether the facility would
7 receive natural gas through an existing utility distribution system, CNG or LNG
8 deliveries, or another supply method;
- 9 3. If trucked natural gas was contemplated, what delivery, unloading, storage,
10 pressure regulation or vaporization, fuel-handling, fire-safety and emergency
11 implications NDEP actually evaluated;
- 12 4. What maximum simultaneous natural-gas demand NDEP evaluated for the
13 permitted burners and thermal oxidizers, and what evidence established that the
14 contemplated fuel-supply system could provide the necessary fuel input, flow and
15 pressure at that operating demand;
- 16 5. Whether the natural-gas supply method and its associated operational
17 components were disclosed in the materials available during public review;
- 18 6. How NDEP's compliance evaluation could be complete if the means of supplying
19 the natural gas required by the permitted operating configuration, and the ability
20 of that supply system to satisfy the contemplated operating demand, had not yet
21 been determined and evaluated;
- 22 7. If the supply method was unresolved during public review, how the public could
23 meaningfully review and comment upon that operating component, how NDEP

1 could respond to comments concerning it, and how the public's subsequent
2 appeal rights were preserved; and

- 3 8. If the natural-gas supply configuration is established or materially changed after
4 final permit issuance, what procedure under NAC 444.6435 or other applicable
5 Nevada law governs NDEP's review and preserves public notice, comment and
6 appeal rights.

7 The issue is not whether someone can devise a technically feasible method of
8 delivering natural gas to MediWaste after the permit has been issued. The issue is what
9 method NDEP evaluated before issuing a final permit for a facility whose permitted
10 operating configuration depends upon that fuel, whether that method was demonstrated
11 capable of supplying the contemplated operating demand, and whether the public was
12 afforded the opportunity required by Nevada's permitting process to evaluate and
13 comment upon that configuration before the decision became final.

14 If the Commission determines that NDEP issued SW1900REV00 without establishing
15 and evaluating how the natural gas required by the permitted operating configuration
16 would actually be supplied, Appellant respectfully submits that the defect occurred in the
17 completeness and evaluation process preceding public review and final permit issuance
18 and warrants reversal of NDEP's final decision.

19 The appropriate remedy is not simply post-permit approval of a fuel-supply system that
20 was absent from the proceeding. Reversal would return the proposed operating
21 configuration to the permitting process where the actual natural-gas supply system, its
22 capacity to provide the required fuel input, flow and pressure at the contemplated
23 operating load, its operational and safety implications, and any resulting permit

- 1 requirements can be evaluated before the public-review and final-decision process
- 2 occurs.
- 3
- 4

GROUND SIX

Any Substitute Fuel, Burner, Thermal Oxidizer or Related Equipment Configuration
Must Receive the Regulatory Review Required for the Changed Configuration

Ground Six follows directly from Ground Five but addresses a different issue.

Ground Five asks whether NDEP adequately established and evaluated how
MediWaste would supply the natural gas required by the permitted operating
configuration before issuing SW1900REV00.

Ground Six asks what happens if MediWaste's eventual solution changes that
configuration.

Air Quality Operating Permit AP4953 4771 identifies natural gas fired burners and
thermal oxidizers and specifies that the burners "may consume only natural gas." The
permitted fuel is therefore not merely a general description of how MediWaste might
choose to operate. It is an express condition of the air permit upon which the facility's
permitted configuration relies.

If MediWaste can operate that configuration using natural gas supplied in a manner
consistent with its permits, Ground Six presents no obstacle.

If, however, MediWaste proposes propane, another fuel, different burners, modified
thermal oxidizers, or other equipment changes because the natural gas configuration
proves impractical, those changes should not simply be treated as an administrative
solution to the problem identified in Ground Five.

1 A solution that changes the configuration NDEP evaluated creates a new regulatory
2 question: What review and approval are required before MediWaste may proceed under
3 the changed configuration?

4 NRS 444.553 requires the operator of a permitted solid waste facility to comply with the
5 terms and conditions of its permit. NAC 444.644(3) further provides that no solid waste
6 handling or processing system may be placed in operation unless approved by the solid
7 waste management authority.

8 NAC 444.6435 recognizes that substantive changes following permit issuance may
9 require public notice and review, including certain changes inconsistent with permitted
10 operational plans and substantive changes affecting facility design, monitoring,
11 corrective action or other matters the solid waste management authority determines
12 require public notice or a hearing.

13 The air permit presents an additional limitation. AP4953 4771 specifies natural gas as
14 the fuel for the identified burners. Substitution of propane or another fuel therefore
15 cannot simply be presumed equivalent to the configuration NDEP permitted.

16 A different fuel or combustion configuration may affect fuel consumption, combustion
17 characteristics, emissions, burner specifications, thermal oxidizer operation, fire
18 protection and other technical considerations. Appellant does not ask the Commission
19 to determine what those effects would be without an engineering evaluation.

20 The point is that the evaluation must occur before the changed configuration is
21 authorized to proceed under SW1900REV00, not after the change has effectively
22 become the solution to an unresolved permitting problem.

1 In fairness to MediWaste, Appellant does not contend that the company should
2 presently be denied an opportunity to correct the fuel supply or equipment configuration
3 if the configuration upon which the existing permits rely cannot practicably be
4 implemented. MediWaste should be afforded the opportunity to propose a technically
5 adequate and legally permissible solution.

6 That opportunity, however, should occur while SW1900REV00 is held in abeyance, not
7 while the permit remains available to be implemented or relied upon to advance
8 activities authorized by it. Any materially changed configuration should first receive the
9 technical evaluation, permit modification, public notice, comment and approval required
10 by Nevada law.

11 Before adjudication of this appeal, Appellant would therefore not oppose an appropriate
12 voluntary regulatory process that holds SW1900REV00 in abeyance while MediWaste
13 proposes a technically adequate and legally permissible solution and NDEP completes
14 all technical evaluation, permit modification and public review required by Nevada law.

15 This proposed opportunity for voluntary correction is not intended as an alternative
16 remedy after the Commission adjudicates the merits.

17 If the matter proceeds to adjudication and the Commission determines that NDEP
18 issued SW1900REV00 without completing the evaluation required before public review
19 and final permit issuance, Appellant respectfully requests reversal of NDEP's final
20 decision. A proposal made after permit issuance to correct the fuel supply or equipment
21 configuration should not retroactively cure a permitting process that the Commission
22 has determined was incomplete when the final permit was issued.

23 Appellant therefore respectfully requests that the Commission determine:

- 1 1. Whether SW1900REV00 requires MediWaste to proceed using the natural gas
2 fired configuration upon which NDEP relied;
- 3 2. Whether AP4953 4771 prohibits operation of the identified burners using propane
4 or another substitute fuel unless the air permit is first lawfully revised;
- 5 3. What regulatory review would be required before MediWaste could substitute
6 another fuel, burner, thermal oxidizer or materially different related equipment
7 configuration;
- 8 4. Whether such a change would require modification of SW1900REV00 under
9 NAC 444.6435 or modification of other applicable permits;
- 10 5. What public notice, comment and appeal rights would apply to any such
11 modification; and
- 12 6. Whether SW1900REV00 may be implemented or relied upon to advance
13 activities authorized by that permit if the equipment or fuel configuration actually
14 proposed differs materially from the configuration NDEP evaluated and
15 permitted.

16 Ground Five asks whether NDEP adequately evaluated the natural gas configuration
17 before issuing the final permit. Ground Six ensures that an unresolved problem with that
18 configuration cannot later be solved by substituting a materially different configuration
19 without first receiving the regulatory and public review required by Nevada law and the
20 applicable permits.

21 In fairness to MediWaste, there remains an opportunity before adjudication to address
22 the problem through an appropriate voluntary regulatory process while SW1900REV00
23 is held in abeyance. If that opportunity is not taken and the Commission thereafter

1 determines on the merits that NDEP issued SW1900REV00 without completing the
2 required evaluation of the fuel supply or operating configuration, Appellant respectfully
3 requests reversal of NDEP's final decision rather than allowing a later configuration
4 change to serve as a substitute for the permitting process that should have occurred
5 before final issuance.

6

7

1 **GROUND SEVEN**

2 **NDEP Continued to Rely Upon the April 10, 2024 County Approval After the**
3 **Project Had Changed Significantly**

4 The facility ultimately evaluated and permitted by NDEP differs significantly from the
5 facility presented to Nye County when the Pahrump Regional Planning Commission
6 approved Conditional Use Permit CU-24-3 on April 10, 2024.

7 This is not simply a comparison between unrelated County and State records. NDEP
8 participated in the regulatory review of the earlier project before the County acted, and
9 NDEP later continued to identify the April 10, 2024 CUP as the local approval for the
10 substantially changed facility.

11 The April 10, 2024 Nye County Staff Report documents that MediWaste submitted an
12 Air Permit Determination Package to NDEP in October 2023 and an updated package in
13 December 2023. The Staff Report further states that NDEP advised MediWaste that it
14 could proceed with a Class II Air Quality Operating Permit application and requested
15 that several issues associated with the process be evaluated. Those issues included fire
16 and explosion potential, DME migration, and the air quality and fire hazards associated
17 with methanol and DME. Significantly, NDEP requested that additional monitoring,
18 testing, recordkeeping and reporting requirements be considered after review with the
19 local planning jurisdiction and emergency response organizations.

20 The project subsequently presented to and approved by the County had specific
21 operational characteristics. The County Staff Report described medical waste being
22 reduced to residual biochar and renewable fuel products. Renewable fuel products were
23 to be sold as a commodity and transported off site. Residual biochar was to be

1 transported off site for recycling or landfill disposal, with biochar recycling anticipated
2 after establishment of a relationship with an end user. The process was represented as
3 occurring in the absence of oxygen with no combustion. The Staff Report also described
4 carbon ash, biochar and renewable fuel as useful byproducts and stated that processed
5 water would be recycled and reused.

6 Those representations were not incidental to the County proceeding. The April 10, 2024
7 PRPC meeting minutes record MediWaste's representative describing an enclosed loop
8 system, DME as the end product, minimal water use because water would be reused,
9 and no combustion emissions. The minutes further record MediWaste stating that
10 residual biochar would go to the local landfill or be recycled, renewable DME would be
11 piped into tanks for sale, and carbon residual ash would be taken to the landfill.

12 The project subsequently evaluated by NDEP changed significantly. NDEP's own Final
13 Response to Comments identifies the earlier process design as "v0.0, submitted May 6,
14 2024" and expressly states that the preapplication correspondence concerning DME
15 and methanol related to that earlier design and "has been overtaken by the revised
16 application." NDEP states that under application v6.0, submitted April 2, 2026, the only
17 solid output is hydrated ash, the gaseous output is described as inert exhaust consisting
18 of carbon dioxide and water vapor, and the process does not generate DME, syngas,
19 methanol, or any liquid byproduct and uses no water or generates wastewater.

20 The later regulatory configuration also involves seven pyrolysis units, 28 natural gas
21 burners and seven natural gas thermal oxidizers. Thus, the changes were not confined
22 to the name of a product or a minor engineering refinement. The governmental records

1 describe changes involving the process, fuel and combustion equipment, process water,
2 gaseous and liquid outputs, and the nature and proposed disposition of the solid output.
3 The change concerning biochar is particularly significant. The County record
4 contemplated biochar as a useful byproduct, including recycling or other beneficial use,
5 while NDEP's later record states that "No beneficial reuse of the ash has been
6 proposed." Appellant does not contend that NDEP's later statement was inaccurate. If
7 both governmental records accurately described the project presented to the respective
8 agencies, however, they describe materially different versions of the project.
9 Despite these changes, NDEP continued to rely upon the earlier County approval.
10 NDEP's April 1, 2026 Draft Fact Sheet expressly identifies the April 10, 2024 Pahrump
11 Regional Planning Commission CUP as the local approval for the medical waste
12 treatment facility while NDEP was evaluating the later facility configuration.
13 That creates the central issue presented by Ground Seven:
14 What decision established that the significantly changed facility was still covered by the
15 Conditional Use Permit that Nye County approved on April 10, 2024 and that NDEP
16 continued to rely upon?
17 Nevada's solid waste statutes establish related but distinct state and local regulatory
18 responsibilities. NRS 444.570 requires the Department to advise, consult and cooperate
19 with municipalities and others in the formulation of plans for and establishment of solid
20 waste management systems. The State Environmental Commission, in cooperation with
21 municipal governing bodies, also participates in development and review of solid waste
22 management system plans.

1 NRS 444.580 preserves local governmental authority concerning solid waste
2 management systems and facilities, including authority concerning their location,
3 design, construction, operation and maintenance. This division of authority is important
4 here. NDEP could evaluate matters within NDEP's regulatory jurisdiction, but NDEP
5 could not exercise Nye County's land use authority or enlarge the scope of a County
6 approval.

7 The regulations reinforce that relationship. NAC 444.658 requires municipal solid waste
8 management plans to be comprehensive in scope, requires existing plans to be updated
9 as necessary, and requires those plans to be submitted to the Division for approval.

10 NAC 444.660 further provides that Nevada's solid waste regulations do not abridge the
11 authority of a town, city or county to establish higher standards.

12 NAC 444.6435 is also instructive because Nevada's regulations recognize that changes
13 affecting permitted design or the manner of waste management can be substantive
14 rather than merely administrative. The regulation identifies changes inconsistent with
15 permitted design or operational plans, substantive changes in permitted design, and
16 certain other changes that the solid waste management authority determines require
17 public notice and hearing.

18 These provisions do not establish that every engineering change requires a new County
19 CUP. Appellant does not ask the Commission to determine the validity or continuing
20 effect of CU-24-3, nor does Appellant contend that NDEP administers Nye County's
21 land use code.

1 The narrower issue is whether the project changed sufficiently that a determination by
2 the governmental body possessing local land use authority was necessary before
3 NDEP could continue treating the April 10, 2024 CUP as the applicable local approval.
4 If the project ultimately evaluated by NDEP was no longer within the scope of the
5 project approved through the County CUP proceeding, NDEP could not itself expand
6 the County approval. The question then becomes whether NDEP was required, through
7 the consultation and coordination contemplated by Nevada's solid waste statutes and
8 regulations, to refer or otherwise identify the changed project to Nye County for a
9 determination of whether additional local review was required before NDEP continued to
10 rely upon CU-24-3.

11 That question is significant because the original County proceeding carried public
12 hearing and appeal rights. NRS 278.315 establishes the local conditional use permit
13 hearing framework, and NRS 278.3195 requires a local appeal procedure under which
14 the governing body may affirm, modify or reverse the land use decision.

15 If the changed project required renewed County approval, only the County could
16 exercise that local land use authority and provide the public process associated with it.
17 NDEP's separate public comment process could not substitute for the public's rights in
18 the County land use proceeding, just as the completed County proceeding could not
19 provide public review of significant project changes that had not yet occurred.

20 NDEP therefore could not resolve a material discrepancy in the County approval by
21 itself. If reconciliation of the changed project required the exercise of County land use
22 authority, the question had to reach the County for that determination. Otherwise, the

1 local authority preserved by Nevada law, together with the public process attached to
2 the exercise of that authority, could effectively be bypassed.

3 Appellant respectfully asks the Commission to determine:

- 4 1. Who decided that the significantly changed facility was still covered by the April
5 10, 2024 County CUP, what law or regulation gave them the authority to make
6 that decision, and what evidence did they rely on?
- 7 2. NDEP requested review of fire, explosion, air quality and other safety concerns
8 with the local planning jurisdiction and emergency response organizations. When
9 was that review completed, who participated in it, what were the findings, and
10 where is the final review or other record showing what NDEP relied upon?
- 11 3. After the project changed significantly, was another review with Nye County
12 conducted, and if so, when was it conducted and where is that review
13 documented?
- 14 4. If the changes required Nye County to review the project again, how was the
15 changed project sent back to the County for that review?
- 16 5. If the changed project was not sent back to Nye County, what Nevada law or
17 regulation allowed NDEP to continue using the April 10, 2024 CUP as the local
18 approval for the significantly changed facility?

19 If the Commission determines that NDEP issued SW1900REV00 without resolving
20 whether the significantly changed facility remained within the scope of the local approval
21 upon which NDEP relied, Appellant respectfully requests that the Commission reverse
22 NDEP's final decision or remand the matter to NDEP with direction to make that
23 determination through the appropriate state and local regulatory process. If the

1 Commission elects to remand, Appellant further requests that SW1900REV00 be held
2 in abeyance so that it cannot be implemented or relied upon to advance activities
3 authorized by that permit while the matter requiring remand remains unresolved.

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1 **GROUND EIGHT**

2 THE APPLICATION RECORD DOES NOT ESTABLISH WHICH APPLICATION WAS
3 SUBJECTED TO PUBLIC REVIEW OR WHETHER THE APPLICATION

4 INCORPORATED INTO SW1900REV00 WAS AVAILABLE TO THE PUBLIC

5 SW1900REV00 identifies "Vulcan Medical Waste Treatment Facility Application v6.0,"

6 submitted April 2, 2026, as Attachment 1 and incorporates that application into the

7 permit. Appellant, however, was unable to locate Attachment 1 or the complete April 2,

8 2026 v6.0 application in the publicly available final permit, fact sheet, issuance notice,

9 Response to Comments package, or July hearing materials.

10 The record also presents an unexplained application version sequence. An earlier

11 permitting record identified Application v7.0 associated with a January 14, 2026

12 submission. The application subsequently identified in the final permit is v6.0, dated

13 April 2, 2026. Thus, the record appears to proceed from an earlier v7.0 to a later dated

14 v6.0 without clearly explaining the relationship between those applications, why the later

15 application carries the lower version number, what changed between the two versions,

16 or which complete application NDEP evaluated at each stage of the permitting process.

17 The unusual sequence does not, standing alone, establish that the applications were

18 improperly numbered or that an unlawful procedure occurred. It does, however, create a

19 material document control question that the administrative record should resolve. That

20 question is particularly significant because the application was not static during the

21 permitting process.

22 An earlier Application v0.0, submitted May 6, 2024, described materially different

23 process features involving DME, methanol, process water, and liquid byproducts. NDEP

1 later stated that the current application no longer included those features and instead
2 described hydrated ash as the solid output, with carbon dioxide and water vapor or
3 other inert exhaust as gaseous outputs. The documented evolution of the proposed
4 process demonstrates why identification of the controlling application, the changes
5 between application versions, and the public availability of the application ultimately
6 approved are substantive matters rather than merely questions of document numbering.
7 The timing of v6.0 creates an additional concern. NDEP's public comment period began
8 April 1, 2026. The application identified in SW1900REV00 as Attachment 1 is v6.0,
9 submitted April 2, 2026, one day after the public comment period began. Appellant was
10 unable to locate the complete v6.0 application in the publicly available permitting
11 materials. The administrative record therefore must establish what complete application
12 was available to the public when the comment period opened on April 1, when and
13 where the complete April 2 v6.0 application became publicly available, and whether the
14 public was afforded a legally sufficient opportunity to review and comment upon that
15 application before NDEP issued the final permit.

16 These questions directly implicate NAC 444.641 and NAC 444.6415. NAC 444.641
17 requires public notice and a 30 day period for public comment after an application has
18 been determined complete and requires information concerning the availability of
19 documents submitted with the application. NAC 444.6415 provides interested persons
20 the opportunity during the public comment period to submit written comments or request
21 a public hearing. Those procedures cannot serve their intended purpose unless
22 interested persons can identify and obtain the application and supporting materials upon
23 which NDEP proposes to act.

1 The record therefore must establish the status and contents of the January 14, 2026
2 v7.0 application, its relationship to the April 2, 2026 v6.0 application, the substantive
3 differences between those versions, why the later dated application carries the lower
4 version number, which version NDEP evaluated, which version was available to the
5 public, and which version ultimately became part of SW1900REV00. If substantive
6 changes occurred between the application available for public review and the
7 application ultimately incorporated into the permit, the record must also establish
8 whether the public received a meaningful opportunity to review and comment upon
9 those changes.

10 The absence of the identified Attachment 1 from the publicly available final permit
11 materials makes this uncertainty especially significant. An application incorporated into
12 a final permit may contain descriptions, representations, operating limitations, technical
13 specifications, and other information relevant to what NDEP approved and what the
14 permit authorizes. If the incorporated application cannot be located in the publicly
15 available final permit materials, the public cannot readily determine the complete
16 contents of the permit or compare the application reviewed during public comment with
17 the application ultimately incorporated into the final agency action.

18 Appellant does not contend that the application numbering alone proves an unlawful
19 procedure, nor does Appellant assert as an established fact, without the complete
20 administrative record, that v6.0 was unavailable throughout the entire comment period.
21 Rather, the defect is that the publicly available permitting record does not resolve these
22 material questions. The earlier identification of v7.0, the subsequent identification of the
23 later dated v6.0, the documented material evolution of the proposed process from v0.0,

1 the April 2 submission date occurring after public comment began, and Appellant's
2 inability to locate Attachment 1 or the complete v6.0 application collectively require an
3 explanation supported by the administrative record.
4 Until NDEP establishes the complete application history, identifies the substantive
5 differences among the relevant application versions, explains the relationship between
6 v7.0 and the later dated v6.0, identifies what application was actually available when
7 public comment began, and demonstrates when and where the complete v6.0
8 application identified as Attachment 1 was made available for public review, it cannot be
9 determined from the publicly available record whether the public reviewed and had a
10 meaningful opportunity to comment upon the actual application that became part of
11 SW1900REV00.

12 Appellant therefore respectfully requests that the Commission determine:

- 13 1. What complete application constitutes Attachment 1 incorporated into
14 SW1900REV00?
- 15 2. On what date did that complete application become part of NDEP's
16 administrative record?
- 17 3. What application version had NDEP evaluated when public review began on April
18 1, 2026?
- 19 4. Was Application v6.0, dated April 2, 2026, available to the public during the
20 comment period and, if so, when and where was it made available?
- 21 5. How do the v6.0, v7.0 and earlier v0.0 version designations relate to one
22 another, what substantive changes occurred among those versions, and which
23 version represents the final controlling design incorporated into SW1900REV00?

1 6. Was the complete application incorporated into the final permit publicly
2 accessible with the final permitting record, and what evidence in the
3 administrative record establishes its public availability?

4 7. If the application materially changed after public review began, what additional
5 public notice, review, comment or hearing opportunity was provided concerning
6 the changed application?

7 Accordingly, to the extent the administrative record fails to establish that the application
8 incorporated into SW1900REV00 was subjected to the public review required by NAC
9 444.641 and NAC 444.6415, issuance of the permit was affected by unlawful procedure
10 and error of law. To the extent NDEP relied upon an application materially different from
11 the application subjected to public review without providing a meaningful opportunity for
12 review and comment, the resulting decision is also clearly erroneous in view of the
13 reliable, probative, and substantial evidence in the whole record, and arbitrary or
14 capricious or characterized by abuse of discretion. See NRS 233B.135(3)(c) through (f).
15 Appellant respectfully requests that the Commission reverse NDEP's final decision or
16 remand the matter to NDEP with direction to establish the complete application history,
17 identify the application actually subjected to public review, identify the substantive
18 differences among the relevant application versions, and determine when and where
19 the application incorporated into SW1900REV00 was made available for public review
20 and comment through the appropriate regulatory process. If the Commission elects to
21 remand, Appellant further requests that SW1900REV00 be held in abeyance so that it
22 cannot be implemented or relied upon to advance activities authorized by that permit
23 while the matter requiring remand remains unresolved.

1

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1 **GROUND NINE**

2 PATHOLOGICAL WASTE, PROHIBITED PUTRESCIBLE WASTE, AND
3 UNREFRIGERATED STORAGE REQUIRE OBJECTIVE AND ENFORCEABLE
4 STANDARDS

5 SW1900REV00 expressly prohibits "Putrescible wastes as defined in NAC 444.608." At
6 the same time, the permit authorizes "Pathological Waste: Human or animal body parts,
7 organs, tissues and surgical specimen," with formaldehyde, formalin, or other
8 preservatives decanted.

9 Those provisions create an unresolved operational distinction. NAC 444.600 defines
10 pathological wastes as human and animal remains consisting of carcasses, organs, and
11 solid organic waste from hospitals, laboratories, and similar sources. NAC 444.608
12 separately provides that "'Putrescible' means capable of being decomposed by
13 microorganisms with sufficient rapidity as to cause nuisances from odors or gases."
14 NAC 444.608. Nothing in those definitions establishes that pathological waste is
15 categorically nonputrescible.

16 NDEP addressed the need for refrigeration by stating in the April 1, 2026 Draft Fact
17 Sheet: "No refrigerated trailers are required as MediWaste's Permit Application states
18 no putrescible waste will be received."

19 That statement assumes the condition that requires technical support. SW1900REV00
20 authorizes biological material consisting of human or animal body parts, organs, tissues,
21 surgical specimens, and other pathological material, while separately prohibiting waste
22 based upon its capacity for microbial decomposition. Stating that putrescible waste will
23 not be received does not establish how NDEP determined that the pathological waste

1 authorized by the permit will be nonputrescible when received or how that distinction will
2 be maintained during actual facility operations.

3 More fundamentally, neither SW1900REV00 nor the permitting record identified by
4 Appellant establishes that every body part, organ, tissue, surgical specimen, or other
5 pathological material authorized for receipt must have been fixed, chemically preserved,
6 refrigerated, frozen, or otherwise treated to render or maintain it nonputrescible before
7 shipment to the facility. Appellant has not identified a Nevada or federal transportation
8 requirement that supplies such a biological preparation standard merely because the
9 material is transported to a medical waste treatment facility.

10 The permit language concerning formaldehyde, formalin, or other preservatives does
11 not resolve that problem. Requiring preservatives to be decanted when they are
12 associated with pathological waste does not establish that every pathological item
13 accepted by MediWaste was previously preserved or completely fixed. Nor does the
14 permit establish who performs the required decanting, where or when it occurs, how
15 completion is verified, what documentation demonstrates compliance, or what evidence
16 concerning the prior preservation or fixation of the pathological material must
17 accompany the waste.

18 Federal public health guidance demonstrates why those omissions are technically
19 significant. CDC guidance concerning formalin fixed tissue describes fixation as a
20 controlled process involving such factors as tissue dimensions, fixative concentration,
21 fixative volume, and exposure time. CDC protocols specify 10 percent neutral buffered
22 formalin, controlled tissue dimensions, adequate fixative volume, and defined fixation
23 periods. CDC guidance also provides that fixed wet tissue not subsequently paraffin

1 embedded may be transferred to 70 percent ethanol for longer term preservation. Those
2 protocols demonstrate that fixation and continued preservation are conditions
3 established through identifiable procedures rather than conditions that can be presumed
4 merely because tissue may previously have been exposed to formalin or another
5 preservative.

6 The distinction is particularly important for whole organs, body parts, and larger tissue
7 masses expressly authorized by SW1900REV00. Fixative penetration occurs
8 progressively through tissue. A specimen may therefore have an adequately fixed
9 exterior while internal tissue has not been equally exposed to the preservative.

10 SW1900REV00 contains no requirement that MediWaste know the fixation history of an
11 incoming specimen, verify complete fixation, or otherwise establish that the material has
12 been rendered nonputrescible before any preservative is decanted.

13 NDEP initially proposed allowing incoming unprocessed waste to remain onsite for as
14 long as 30 days. Following public comment, NDEP reduced the final onsite storage
15 period to a maximum of 15 days from the date of receipt onsite. That reduction limits the
16 duration of onsite storage but does not establish the scientific or technical basis for
17 concluding that the pathological material authorized by the permit will remain
18 nonputrescible throughout that period.

19 The record identified by Appellant does not establish how NDEP determined that 15
20 days of unrefrigerated onsite storage was appropriate for the pathological waste
21 expressly authorized by SW1900REV00. It does not identify what NDEP considered
22 concerning tissue type or size, prior preservation, degree of fixation, preservative
23 concentration, fixation time, completeness of preservative penetration, condition of the

1 material when received, or the effect of storage temperature after any preservative is
2 decanted. Nor does the record identified by Appellant identify a study, professional
3 standard, technical analysis, or other evidence establishing that the authorized
4 pathological waste will remain nonputrescible for the permitted 15 day storage period
5 without refrigeration or temperature controls.

6 SW1900REV00 does not require refrigeration of incoming pathological waste during
7 that period. It establishes no maximum storage temperature and no temperature
8 monitoring requirement. These omissions are significant in the Pahrump environment,
9 where outdoor trailers may be subjected to substantial summer heat. Appellant does not
10 rely upon a particular assumed trailer temperature. The relevant issue is that the permit
11 establishes no enforceable temperature limit despite allowing biological tissue to remain
12 onsite for as long as 15 days after receipt.

13 The 15 day limitation also begins only when the waste is received at the Pahrump
14 facility. It does not establish the age or condition of the pathological material when it
15 arrives. Before the onsite period begins, waste may have undergone generator storage,
16 collection, transfer, staging, and interstate transportation. The broader generation to
17 treatment period and conditions encountered before receipt are addressed separately in
18 Ground Ten of this Opening Brief. They are relevant here only to the extent that the
19 condition of pathological waste upon receipt cannot necessarily be established by
20 counting the number of days it subsequently remains onsite.

21 SW1900REV00 does not establish what objective inspection must be performed at
22 receipt, what acceptance or rejection criteria distinguish permitted pathological waste
23 from prohibited putrescible waste, how that determination must be documented, what

1 evidence of preservation or treatment must accompany the waste, or what condition
2 requires rejection. Nor does it establish what must occur if pathological material initially
3 accepted as nonputrescible subsequently decomposes sufficiently to meet the definition
4 of putrescible waste under NAC 444.608.

5 These omissions are material because once pathological waste becomes putrescible
6 within the meaning of NAC 444.608, SW1900REV00 itself prohibits that waste. An
7 enforceable distinction therefore requires more than the facility's intention not to receive
8 putrescible waste. It requires an objective means of determining where the line between
9 permitted pathological waste and prohibited putrescible waste exists and how that
10 distinction will be maintained during receipt, storage, and treatment.

11 Nevada's regulations reinforce the need for an operationally meaningful distinction. "All
12 solid wastes must be: (a) Stored, collected, utilized, treated, processed and disposed of
13 by means that do not create a health hazard, public nuisance or impairment of the
14 environment." NAC 444.644(1)(a). The regulation further requires solid waste to be
15 handled in a manner that does not contribute to insects, rodents, or disease vectors.
16 NAC 444.644(1)(b).

17 Nevada also provides: "No system for the storage, collection or transportation of solid
18 waste may be allowed to cause health hazards, public nuisances or otherwise cause or
19 contribute to the impairment of the environment." NAC 444.660(3).

20 Additionally: "No solid waste processing system may be allowed to cause health
21 hazards, public nuisances or otherwise cause or contribute to the impairment of the
22 environment." NAC 444.668.

Those requirements, considered together with the definitions of pathological waste and putrescible waste in NAC 444.600 and NAC 444.608, require an operationally meaningful distinction between the pathological waste SW1900REV00 authorizes and the putrescible waste it prohibits. NDEP's statement that MediWaste will not receive putrescible waste assumes the very condition that requires technical and administrative support when the permit simultaneously authorizes human and animal body parts, organs, tissues, and surgical specimens, requires associated preservatives to be decanted, allows as long as 15 days of onsite storage after receipt, and imposes no refrigeration or maximum temperature requirement.

Accordingly, the record raises the following questions for Commission review:

1. What requirement establishes that the human or animal body parts, organs, tissues, surgical specimens, and other pathological waste authorized by SW1900REV00 must have been fixed, chemically preserved, refrigerated, frozen, or otherwise treated before shipment so that the material is nonputrescible when received at the Pahrump facility?
2. If no such treatment or preservation requirement exists, what technical or administrative basis did NDEP rely upon in determining that the pathological waste authorized by SW1900REV00 would be nonputrescible when received?
3. What objective criteria distinguish a permitted body part, organ, tissue, or surgical specimen from the same biological material when it meets the definition of prohibited putrescible waste under NAC 444.608?

- 1 4. What inspection, documentation, or other verification is required at receipt to
2 establish that incoming pathological waste satisfies that distinction, and who is
3 responsible for making and documenting that determination?
- 4 5. When formaldehyde, formalin, or another preservative is present, who is required
5 to decant it, where and when must decanting occur, what standard establishes
6 that decanting has been completed, and what documentation verifies compliance
7 with that permit condition?
- 8 6. If NDEP relies upon prior fixation or preservation to support the conclusion that
9 pathological waste is nonputrescible, what evidence establishes the adequacy of
10 that fixation or preservation, particularly for whole organs, body parts, and larger
11 tissue masses for which complete preservative penetration cannot simply be
12 presumed?
- 13 7. What scientific or technical basis did NDEP rely upon in reducing the proposed
14 30 day storage period to 15 days and determining that pathological waste could
15 remain unrefrigerated for as long as 15 days after receipt while remaining
16 nonputrescible?
- 17 8. What did NDEP consider concerning tissue type and size, preservation history,
18 degree of fixation, condition upon receipt, storage temperature, and the effect of
19 decanting preservatives before concluding that refrigeration, maximum
20 temperature limits, and temperature monitoring were unnecessary?
- 21 9. If pathological waste is accepted as nonputrescible but subsequently
22 decomposes sufficiently to meet the definition of putrescible waste under NAC
23 444.608, what enforceable permit condition requires its rejection, removal,

1 treatment, refrigeration, or other corrective action, and what procedure governs
2 that event?

3 10. Does the administrative record contain sufficient reliable, probative, and
4 substantial evidence to support NDEP's determination that the pathological waste
5 expressly authorized by SW1900REV00 can be received, stored without
6 refrigeration or temperature limits for as long as 15 days, and processed without
7 becoming waste expressly prohibited by the same permit?

8 The record identified by Appellant does not establish those answers. Instead, a material
9 condition separating authorized pathological waste from expressly prohibited putrescible
10 waste is left dependent upon assumptions concerning the prior treatment, preservation,
11 condition, inspection, and continued stability of biological material during future
12 operations.

13 To the extent NDEP issued SW1900REV00 without establishing a reliable technical and
14 administrative record demonstrating how the permit's prohibition against putrescible
15 waste will be maintained, NDEP's final decision was affected by error of law, clearly
16 erroneous in view of the reliable, probative, and substantial evidence in the whole
17 record, and arbitrary or capricious or characterized by abuse of discretion. NRS
18 233B.135(3)(d) through (f).

19 Appellant respectfully requests that the Commission reverse NDEP's final decision or
20 remand the matter to NDEP with direction to establish objective and enforceable criteria
21 distinguishing permitted pathological waste from prohibited putrescible waste, including
22 the required condition of pathological material upon receipt, verification of any required
23 preservation and decanting, acceptance and rejection criteria, storage and temperature

1 requirements, and corrective action if accepted pathological waste subsequently
2 becomes putrescible, through the appropriate state and local regulatory process. If the
3 Commission elects to remand, Appellant further requests that SW1900REV00 be held
4 in abeyance so that it cannot be implemented or relied upon to advance activities
5 authorized by that permit while the matter requiring remand remains unresolved.

6

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GROUND TEN

The Permit Does Not Establish a Maximum Generation-to-Treatment Age for Medical and Pathological Waste

SW1900REV00 permits waste received at the Pahrump facility to remain onsite for up to 15 days before processing.

That is only the Pahrump onsite portion of the waste's history.

Waste may already have been stored following generation, collected, transferred, staged and transported interstate before arriving in Pahrump.

Consequently, a shipment may already be several days old when MediWaste's separate Pahrump storage period begins.

This issue is particularly significant because MediWaste's permitted service area includes California and other markets throughout North America. California law provides a concrete example of why the Pahrump receipt date does not establish the age of the waste.

California expressly includes certain pathology waste within its definition of biohazardous waste, including human body parts, surgery specimens and tissues that meet the statutory criteria, including qualifying material that has been fixed in formaldehyde or another fixative. Cal. Health & Safety Code § 117690(b)(2)(A).

California law further provides that a person shall not store biohazardous waste above 0 degrees Centigrade (32 degrees Fahrenheit) at an offsite location or facility for more than seven days before treatment. Cal. Health & Safety Code § 118280(e)(4).

Thus, qualifying biohazardous waste, including pathology waste, may already have undergone lawful offsite storage in California before being transported interstate to

1 Nevada. Transportation time may then occur before the waste reaches the Pahrump
2 facility.

3 SW1900REV00 nevertheless begins its separate storage limitation upon receipt at the
4 Pahrump facility and allows that waste to remain onsite for up to 15 additional days
5 before processing.

6 Appellant does not contend that every shipment received by MediWaste will have been
7 stored in California for seven days. California provides a concrete regulatory example
8 demonstrating that waste may already have undergone lawful storage before interstate
9 transportation and before MediWaste's separate Pahrump storage period begins. Waste
10 originating in or passing through other jurisdictions may be subject to different storage
11 requirements.

12 The permit therefore does not establish a maximum cumulative period encompassing
13 generation, prior storage, collection, transfer, staging, interstate transportation,
14 Pahrump receipt and Pahrump storage before processing.

15 The critical unanswered question is:

16 What is the maximum permitted elapsed time from generation of medical or pathological
17 waste until final treatment, including generator storage, collection, transfer, staging,
18 interstate transportation, Pahrump receipt and Pahrump storage?

19 A 15-day onsite limit does not answer that question.

20 For pathological waste in particular, the record should provide a traceable chain of
21 custody showing relevant generation, pickup, transfer, Pahrump receipt and treatment
22 times so that the actual age of the material can be determined.

23 Appellant respectfully requests that the Commission determine:

- 1 1. What maximum elapsed time may occur between generation and treatment for
- 2 each accepted medical and pathological waste category?
- 3 2. Whether the 15-day Pahrump storage period is independent of storage time
- 4 before arrival in Nevada?
- 5 3. What generator, transfer-facility and transporter records must accompany waste
- 6 so its actual age can be determined?
- 7 4. How California storage limits applicable before interstate transport are accounted
- 8 for when waste is later received and stored in Nevada?
- 9 5. Whether temperature history is preserved where storage duration depends upon
- 10 temperature?
- 11 6. What action is required if the generation date, prior storage duration or
- 12 temperature history cannot be established?
- 13 7. For pathological waste, what chain-of-custody record establishes generation,
- 14 pickup, transfer, Pahrump receipt and treatment times?

15 The issue is not whether every shipment will remain in storage for the maximum period
16 allowed at every stage. The issue is whether NDEP established any enforceable
17 maximum generation-to-treatment age for the medical and pathological waste
18 authorized by SW1900REV00, or whether the permit regulates only the final Pahrump
19 portion of a potentially longer storage and transportation history.

20 If NDEP determined that the permitted storage and processing arrangement adequately
21 protects human health and the environment regardless of the age, prior storage
22 conditions or transportation history of incoming waste, Appellant respectfully requests
23 identification of the evidence and objective criteria supporting that determination.

1 If NDEP did not establish or evaluate the maximum cumulative generation-to-treatment
2 period before issuing SW1900REV00, Appellant respectfully requests that the
3 Commission determine whether the permitting decision adequately addressed the
4 storage and processing of the medical and pathological waste authorized by the permit.
5 Under NRS 233B.135(3), agency action may be set aside when, among other grounds,
6 it is affected by error of law, made upon unlawful procedure, clearly erroneous in view of
7 the reliable, probative and substantial evidence in the whole record, or arbitrary or
8 capricious or characterized by abuse of discretion.

9 If the Commission determines that NDEP issued SW1900REV00 without adequately
10 evaluating the cumulative storage age and handling history of the medical and
11 pathological waste authorized by the permit, Appellant respectfully requests that the
12 Commission reverse NDEP's final decision or remand the matter to NDEP for
13 completion of that evaluation.

14 If the Commission elects to remand rather than reverse, Appellant further requests that
15 SW1900REV00 be held in abeyance, or that the Commission impose such other relief
16 within its stated authority as is necessary to prevent MediWaste from commencing
17 operations until the matters requiring remand have been completed and any public
18 review required by Nevada law has occurred.

19

20

1 **GROUND ELEVEN**

2 THE FINAL REGULATORY CLASSIFICATION AND DISPOSAL PATHWAY FOR
3 MEDIWASTE'S OUTGOING RESIDUE WERE NOT ESTABLISHED BEFORE PERMIT
4 ISSUANCE

5 SW1900REV00 authorizes MediWaste to process medical waste through its proposed
6 pyrolysis system and thereby generate a residual material described in the permitting
7 record as outgoing residue, ash, or hydrated ash. Disposal of that material is a
8 necessary and recurring consequence of the operation authorized by the permit.

9 Nevada law expressly includes "ashes or incinerator residue" within the definition of
10 solid waste. NRS 444.490(1). Hazardous waste managed pursuant to NRS 459.400
11 through 459.600 is excluded from that definition. NRS 444.490(2)(a). The regulatory
12 classification and characterization of MediWaste's outgoing residue therefore matter
13 because they determine the requirements applicable to its handling and disposal.

14 Nevada's solid waste regulations define a "solid waste management system" as "the
15 entire process of storage, collection, transportation, processing and disposal of solid
16 waste." NAC 444.626. The lawful storage, management, and final disposition of the
17 residue produced by the MediWaste process are therefore part of the regulated solid
18 waste management system, not matters separate from the permitted operation.

19 SW1900REV00 itself recognizes that the outgoing residue requires an authorized
20 disposal pathway. The permit defines "Outgoing Residue" as material remaining in the
21 pyrolysis unit after treatment is complete and requires that it be disposed of at an
22 appropriately permitted disposal facility. The permit further provides that if the disposal

1 facility is located within Nevada, NDEP-BSMM must approve disposal of the ash at that
2 facility.

3 The difficulty is that NDEP issued SW1900REV00 before necessary elements
4 governing that disposal pathway were complete. The required characterization of the
5 outgoing residue had not been completed, material ash sampling and characterization
6 requirements remained subject to later submission or NDEP approval, and the permit
7 did not identify a disposal facility legally authorized to receive the resulting residue.

8 This is not merely an administrative question concerning whether NDEP considered the
9 application sufficiently complete to conduct its review. It concerns whether the final
10 permit itself establishes the substantive regulatory requirements necessary to manage a
11 waste stream that will necessarily and continuously result from operation of the
12 permitted facility.

13 Without the required characterization results, the record does not establish the final
14 regulatory classification of the residue or what disposal facility is legally authorized to
15 receive it. SW1900REV00 does not authorize MediWaste to dispose of the residue at
16 the Pahrump Landfill and does not identify another disposal facility authorized to receive
17 it. Nor does the permit establish that the residue may simply remain stored indefinitely
18 at 1850 E. Basin Avenue while future characterization, classification, and disposal
19 determinations are made.

20 The unresolved disposition of a waste stream necessarily generated by operation is
21 therefore a substantive permitting issue. The permit authorizes the process that creates
22 the residue while leaving material determinations governing the lawful management and
23 disposition of that residue to future submissions and NDEP approval.

1 Nevada law makes the receiving facility's authorization material. A disposal site permit
2 "must specify the amount and type of solid waste which the disposal site may receive
3 that is consistent with the design and operational plans of the site." NAC 444.643(3).

4 Nevada further provides: "No system for solid waste handling, processing, salvage or
5 disposal may be placed in operation unless approved by the solid waste management
6 authority." NAC 444.644(3).

7 Most importantly for protection of the public, Nevada requires: "All solid wastes must be:
8 (a) Stored, collected, utilized, treated, processed and disposed of by means that do not
9 create a health hazard, public nuisance or impairment of the environment." NAC
10 444.644(1)(a).

11 That requirement applies to the entire chain at issue here. It expressly includes storage,
12 treatment, processing, and disposal. NDEP therefore had to evaluate whether the
13 system it approved would manage the waste by means that do not create a health
14 hazard, public nuisance, or impairment of the environment. NAC 444.644(1)(a).

15 The record raises a fundamental question as to how NDEP could make that
16 determination while substantive elements governing the hydrated ash remained
17 unresolved. Without completed characterization requirements and results, the final
18 regulatory classification and lawful disposal pathway had not been established. Without
19 an identified and authorized disposal pathway, the record does not establish how NDEP
20 evaluated the public health and environmental consequences associated with the actual
21 final disposition of the residue. Without completed compliance and response
22 requirements, the permit does not establish what operational response is required if ash
23 testing produces an unacceptable result, whether additional residue may continue to be

1 generated, how that residue may be stored or accumulated, or what must occur before
2 affected operations or disposal may resume.

3 Those are not matters unrelated to the protection required by NAC 444.644(1)(a). They
4 concern the storage, processing, and disposal activities expressly governed by that
5 regulation. The question is therefore not simply whether NDEP possesses authority to
6 intervene after a health or environmental threat develops. The question is what reliable,
7 probative, and substantial evidence existed when SW1900REV00 was issued
8 demonstrating that the complete system for storage, processing, and disposal of the
9 outgoing residue satisfied NAC 444.644(1)(a) when material components governing that
10 system had not yet been established.

11 For medical waste specifically, medical waste may be deposited at a disposal site only if
12 provisions for such disposal are included in the site's operational plan and approved by
13 the solid waste management authority. NAC 444.646(1).

14 The Pahrump Landfill illustrates the significance of the unresolved classification and
15 disposal pathway. Pahrump Landfill Permit SW97REV05 identifies specific categories of
16 solid waste permitted for disposal: Municipal Solid Waste, Waste Tires, Medical Waste,
17 Animal Carcasses, Sewage Sludge and Solidified Septage, and Food Industry Waste.

18 The remaining numbered category is "Reserved." The permit does not expressly identify
19 pyrolysis ash, hydrated ash, char, biochar, or MediWaste outgoing residue as an
20 authorized waste type.

21 That does not establish that MediWaste's outgoing residue could never be disposed of
22 at the Pahrump Landfill. After characterization and regulatory review, NDEP could
23 determine that the residue falls within a waste classification already authorized by the

1 landfill's permit and approved operational plan. The present record, however, does not
2 establish that determination.

3 Nye County's public landfill information reinforces that distinction. The County states
4 that its public prohibited waste information is not a complete list and that acceptance
5 depends upon each landfill's operating permit, applicable regulations, waste
6 characterization, and operational limitations. The County's public table does not
7 specifically list ash or biochar as prohibited at the Pahrump Landfill. That omission does
8 not establish that MediWaste's residue is authorized for disposal there. The applicable
9 regulatory classification, characterization results, landfill permit, and approved
10 operational plan must establish whether the facility is authorized to receive it.

11 The permitting record further states: "No beneficial reuse of the ash has been
12 proposed." Beneficial reuse therefore was not the final disposition pathway evaluated as
13 part of the permitting decision. If beneficial reuse is later proposed, that proposed
14 disposition would require whatever characterization, regulatory determination, approval,
15 and public process are applicable to that use.

16 The unresolved ash requirements also present a fundamental enforceability problem.

17 NRS 444.553(2) requires the operator of a permitted solid waste management facility to
18 comply with the terms and conditions of its permit. That statutory obligation cannot
19 supply a substantive permit condition that NDEP did not establish. If NDEP leaves a
20 substantive operating requirement to future determination, defers it to a future plan or
21 approval, or does not address it at all, NRS 444.553(2) cannot transform that unwritten
22 requirement into an existing term or condition of SW1900REV00.

1 This distinction is important because characterization determines more than the
2 eventual destination of the ash. The results may determine its regulatory classification
3 and how and where it may lawfully be managed. The applicable requirements must also
4 provide an enforceable means of determining when a result is unacceptable and what
5 operational consequence follows.

6 If hydrated ash testing produces an unacceptable result, the permit must provide an
7 enforceable basis for determining what standard has been exceeded, whether
8 continued processing or generation of additional residue must cease, how the affected
9 residue must be stored and managed, what corrective action is required, what additional
10 testing must occur, and what conditions must be satisfied before affected operations or
11 disposal may resume. General statutory authority to enforce permit conditions cannot
12 substitute for substantive permit conditions that have not been established.

13 Nevada's enforcement provisions reinforce that distinction. An enforcement order must
14 "[s]pecify the term or condition of a permit issued pursuant to NRS 444.505, 444.553 or
15 444.556, or the statute or regulation, which is alleged to have been violated or which is
16 about to be violated, or the threat to human health, public safety or the environment."

17 NRS 444.594(1)(a). The order must also "[p]rescribe any corrective action which must
18 be taken and a reasonable time within which it must be taken." NRS 444.594(1)(c).

19 NDEP retains separate authority under NRS 444.592 when solid waste presents or may
20 present a threat to human health, public safety, or the environment. That reactive
21 authority does not complete SW1900REV00 or establish in advance substantive
22 operating requirements omitted or deferred from the final permit. The question is not
23 whether NDEP may react after a threat develops. The question is whether NDEP could

1 issue a final permit before establishing the enforceable requirements intended to
2 determine compliance and govern the response to an unacceptable result in the first
3 instance.

4 The problem is therefore circular. SW1900REV00 authorizes an operation that
5 necessarily generates hydrated ash. The permit requires characterization to determine
6 how that ash may lawfully be managed and disposed. Material requirements governing
7 that characterization and disposition remain subject to future determination. NRS
8 444.553(2) then requires MediWaste to comply with the terms and conditions of its
9 permit, but that statute cannot enforce as a permit condition a substantive requirement
10 that NDEP has not yet established as a term or condition of the permit.

11 The same deferral directly affects the permitting process, including public comment and
12 administrative appeal. Nevada's solid waste permitting process provides for public
13 notice and a 30 day public comment period concerning NDEP's proposed permitting
14 decision. NAC 444.641(3). Interested persons may submit comments and request a
15 public hearing. NAC 444.6415. NDEP itself describes its permitting process as providing
16 public comment following technical review and expressly states that a person wishing to
17 appeal its permitting decision may appeal to the State Environmental Commission.

18 Those rights have practical meaning only if the substantive determinations exist when
19 the public is afforded the opportunity to review and challenge them. Here, the public
20 was asked to comment upon the proposed MediWaste permit before the final regulatory
21 classification, enforceable requirements, and authorized disposal pathway for the
22 outgoing residue had been established.

1 The public therefore could not meaningfully comment upon the suitability, authorization,
2 location, capacity, operating conditions, public health consequences, environmental
3 consequences, or regulatory requirements associated with the actual disposal facility
4 that would ultimately receive MediWaste's outgoing residue because that determination
5 had not yet been made.

6 The same problem applies to administrative appeal. Appellant is presently challenging
7 NDEP's final decision issuing SW1900REV00. Had the regulatory classification,
8 enforceable ash requirements, required response to unacceptable results, and
9 authorized disposal pathway been resolved as part of that final permitting decision,
10 those determinations would have been part of the permitting record available for public
11 comment and administrative review.

12 A substantive requirement established only after permit issuance was not available for
13 public review and comment before NDEP's final decision and was not part of the final
14 permitting record available for administrative appeal. Once the public comment period
15 expired and NDEP issued SW1900REV00, the opportunity to comment upon the permit
16 as proposed had passed. Once the period for administrative appeal of that final decision
17 expires, the opportunity to challenge that final permitting decision likewise passes.

18 NDEP therefore cannot cure the public participation and administrative review problem
19 merely by establishing the missing substantive requirements later. Doing so does not
20 restore the public comment opportunity that existed before permit issuance or
21 automatically provide a new administrative appeal equivalent to the appeal from the
22 final permitting decision.

1 If characterization requirements, regulatory classification, authorized disposal pathway,
2 compliance standards, required responses to unacceptable ash results, or other
3 substantive operating requirements are established only after SW1900REV00 becomes
4 final, those determinations were not subjected to the permitting process in which the
5 public had the opportunity to comment and seek administrative review.

6 This is particularly significant because SW1900REV00 does not establish that every
7 future plan, determination, or NDEP approval deferred until after issuance will
8 independently undergo public notice and comment and result in an appealable final
9 permitting decision. Without those protections, deferring or omitting substantive permit
10 requirements until after issuance allows the public comment and appeal periods
11 applicable to the final permitting decision to run before the requirements themselves
12 exist.

13 The issue becomes additionally significant if the future disposal determination requires
14 modification of a receiving landfill's permit. NAC 444.6435 provides that a permit
15 modification may be subject to public notice and 30 days of public review when the
16 modification includes an increase in the amount or type of solid waste managed at the
17 site that is inconsistent with the permitted design, operational plans, or municipal solid
18 waste plans; a change in the manner of waste management inconsistent with those
19 plans; a substantive change in specified permit requirements; or another change the
20 solid waste management authority determines requires public notice and a public
21 hearing. NAC 444.6435(1) through (4).

22 The question is therefore not simply where MediWaste will eventually take the hydrated
23 ash. The more fundamental question is whether NDEP could issue a final permit

1 authorizing an operation that necessarily generates that residue before establishing the
2 characterization requirements, regulatory classification, enforceable compliance
3 standards, required response to an unacceptable result, and lawful final disposition
4 pathway necessary to manage it, while allowing the permitting process, including public
5 comment and administrative appeal, to proceed without those substantive requirements
6 having been established.

7 Accordingly, the record raises the following questions for Commission review:

- 8 1. What is the regulatory classification of the outgoing residue, ash, or hydrated ash
9 produced by MediWaste after treatment?
- 10 2. What characterization results and regulatory standards determine whether that
11 residue may be managed as nonhazardous solid waste, falls within another
12 authorized solid waste category, or must be managed under hazardous waste
13 requirements?
- 14 3. How could NDEP establish a lawful final disposition pathway before the required
15 characterization of the outgoing residue had been completed?
- 16 4. What disposal facility or class of disposal facility did NDEP determine was
17 appropriately permitted to receive MediWaste's outgoing residue when
18 SW1900REV00 was issued?
- 19 5. If no receiving facility had been identified and approved when SW1900REV00
20 was issued, what lawful final disposition does the permit presently authorize for
21 the outgoing residue necessarily generated by operation?
- 22 6. What reliable, probative, and substantial evidence did NDEP rely upon to
23 determine that storage, treatment, processing, and disposal of the outgoing

1 residue would not create a health hazard, public nuisance, or impairment of the
2 environment as required by NAC 444.644(1)(a), when material characterization
3 and disposition requirements remained unresolved?

4 7. If disposal at a Nevada facility requires subsequent NDEP-BSMM approval, what
5 substantive standards and characterization results will govern that approval?

6 8. What material ash characterization, sampling, compliance, and response
7 requirements remain subject to future submission, determination, or NDEP
8 approval after issuance of SW1900REV00?

9 9. What constitutes an unacceptable hydrated ash test result under the final permit,
10 and what specific term or condition of SW1900REV00 establishes that standard?

11 10. If hydrated ash testing produces an unacceptable result, what specific permit
12 condition requires processing or generation of additional residue to cease, if
13 cessation is required?

14 11. If processing may continue after an unacceptable result, what permit condition
15 governs the amount, duration, location, and conditions under which additional
16 residue may accumulate while lawful disposal is unavailable?

17 12. What corrective action, additional testing, or other requirement must be satisfied
18 following an unacceptable result, and what specific permit condition determines
19 when affected operations or disposal may resume?

20 13. How can NDEP enforce a substantive requirement under NRS 444.553(2) as a
21 term or condition of SW1900REV00 if that requirement is deferred to a future
22 plan or approval or was not addressed in the final permit?

- 1 14. Does MediWaste's outgoing residue, after characterization, fall within any waste
2 category presently authorized by Pahrump Landfill Permit SW97REV05 and its
3 approved operational plan?
- 4 15. If NDEP determines that the residue falls within an existing Pahrump Landfill
5 waste category, what regulatory classification, characterization results, permit
6 provision, and approved operational provision support that determination?
- 7 16. If the Pahrump Landfill's existing permit and operational plan do not authorize the
8 characterized residue, what additional permit modification or approval would be
9 required before that landfill could accept it?
- 10 17. If such a modification changes the amount or type of waste managed at the
11 landfill or the manner in which that waste is managed, what public notice,
12 comment, hearing, and administrative review rights apply under NAC 444.6435
13 and other applicable law?
- 14 18. If the Pahrump Landfill cannot accept the characterized residue, what
15 appropriately permitted disposal facility or disposal pathway did NDEP identify
16 before issuing SW1900REV00?
- 17 19. What opportunity did the public have during the SW1900REV00 permitting
18 process to review and comment upon the actual authorized disposal facility when
19 that facility and the regulatory classification necessary to determine its
20 authorization had not yet been established?
- 21 20. What opportunity will the public have to receive notice, comment, request a
22 hearing, and seek administrative review or appeal when NDEP later establishes

1 deferred substantive ash requirements, determines the regulatory classification,
2 or approves the disposal facility?

3 21. If beneficial reuse is proposed in the future notwithstanding NDEP's statement
4 that "No beneficial reuse of the ash has been proposed," what characterization,
5 regulatory determination, approval, public notice, comment, hearing, and
6 administrative review would apply before the residue could be distributed, sold,
7 reused, or otherwise managed outside the disposal pathway evaluated during
8 permitting?

9 22. Does the administrative record contain sufficient reliable, probative, and
10 substantial evidence establishing a lawful, complete, enforceable, and protective
11 final disposition pathway for the residue necessarily produced by the MediWaste
12 facility?

13 The record identified by Appellant does not establish those answers. Instead,
14 SW1900REV00 authorizes the process that necessarily generates the outgoing residue
15 while leaving material characterization, classification, compliance, enforcement, public
16 health protection, and disposal determinations to future submissions, plans, or NDEP
17 approval.

18 The issue is not whether MediWaste may eventually identify a lawful disposal facility or
19 whether NDEP may later establish additional requirements. The issue is whether NDEP
20 could issue SW1900REV00 as its final permitting decision before establishing
21 substantive requirements necessary to characterize, classify, safely manage, regulate,
22 enforce, and lawfully dispose of a waste stream necessarily generated by the permitted
23 operation, and thereby allow the permitting process, including public comment and

1 administrative appeal, to run without those substantive requirements having been
2 established.

3 To the extent NDEP issued SW1900REV00 without establishing the regulatory
4 classification, enforceable compliance requirements, required response to unacceptable
5 ash results, public health and environmental protections, and lawful final disposition
6 pathway for the residue necessarily generated by the permitted operation, and deferred
7 or failed to address those material determinations until after permit issuance, NDEP's
8 final decision was affected by error of law, clearly erroneous in view of the reliable,
9 probative, and substantial evidence in the whole record, and arbitrary or capricious or
10 characterized by abuse of discretion. NRS 233B.135(3)(d) through (f).

11 Appellant respectfully requests that the Commission reverse NDEP's final decision. If
12 the Commission determines that remand is appropriate, Appellant further requests that
13 SW1900REV00 be held in abeyance so that it cannot be implemented or relied upon to
14 advance activities authorized by that permit while the matter requiring remand remains
15 unresolved.

GROUND TWELVE

THE FINAL PERMITTED OPERATION MATERIALLY DIFFERS FROM THE
RESOURCE RECOVERY PROJECT DESCRIBED EARLIER IN THE RECORD, AND
THE RECORD DOES NOT ESTABLISH WHAT PREVENTS DIRECT DISPOSAL OF
INCOMING MEDICAL WASTE IF THE PROCESS IS NOT USED

The MediWaste project presented earlier in the permitting record was described as a
resource recovery process intended to convert medical waste into useful products.

Earlier application materials described outputs including dimethyl ether (DME),
methanol, carbon dioxide, process water, and a carbonaceous solid material described
as biochar or char.

The operation ultimately authorized by SW1900REV00 is materially different. The final
permitting record describes the incoming medical waste as being processed through
pyrolysis and the resulting solid material as outgoing residue, ash, or hydrated ash
requiring characterization and disposal at an appropriately permitted disposal facility.
NDEP further stated in its permitting record: "No beneficial reuse of the ash has been
proposed."

The significance of that change extends beyond terminology. The earlier project was
presented as recovering useful products from medical waste. The permitted operation
instead generates a residual waste stream for which lawful disposal is required. That
change raises a separate question concerning what prevents incoming medical waste
from being disposed of directly at an authorized disposal facility if MediWaste does not
process it, potentially creating an additional disposal burden on the landfill, local
government, and taxpayers.

1 Nevada regulates the entire solid waste management system. A "solid waste
2 management system" means "the entire process of storage, collection, transportation,
3 processing and disposal of solid waste." NAC 444.626.

4 Nevada further requires: "All solid wastes must be: (a) Stored, collected, utilized,
5 treated, processed and disposed of by means that do not create a health hazard, public
6 nuisance or impairment of the environment." NAC 444.644(1)(a).

7 No solid waste handling, processing, salvage or disposal system may be placed in
8 operation unless approved by the solid waste management authority. NAC 444.644(3).

9 Medical waste is separately addressed by Nevada's disposal regulations. "Sewage
10 sludges, septic tank pumpings and medical wastes may be deposited at a disposal site
11 only if provisions for such disposal are included in the operational plan and approved by
12 the solid waste management authority." NAC 444.646(1).

13 NDEP's own guidance concerning medical waste is even more direct. In NDEP's
14 "Treatment Collection and Disposal of Infectious Medical Waste" Fact Sheet, under
15 "Regulatory Framework," NDEP states: "Nevada regulations do not require treatment of
16 medical waste. Disposal in a permitted landfill according to approved practices is
17 acceptable." NDEP further explains that until medical waste has been either treated or
18 disposed, it must be stored and collected pursuant to NAC 444.662.

19 That distinction matters because the regulatory status and disposal pathway of the
20 incoming medical waste differ from those of the outgoing residue addressed in Ground
21 Eleven. Before processing, the material remains medical waste subject to Nevada's
22 requirements governing storage, collection, transportation, handling and disposal.

23 Nevada does not require treatment of medical waste before disposal in an appropriately

1 permitted landfill according to approved practices. After MediWaste processes the
2 incoming waste through pyrolysis, however, the resulting material becomes outgoing
3 residue or hydrated ash that SW1900REV00 requires to be characterized and disposed
4 of at an appropriately permitted disposal facility.

5 SW1900REV00 authorizes MediWaste to receive and process specified categories of
6 medical and special waste from generators and transporters located anywhere in North
7 America. The permitted incoming waste stream includes Sharps, Regulated Medical
8 Waste, Trace Chemotherapy Contaminated Waste, Pathological Waste, Non-RCRA
9 Pharmaceuticals, and California only Solidified Canisters, subject to the specific
10 acceptance criteria and prohibitions established by the permit.

11 The landfill's NDEP Permit SW97REV05 expressly identifies "Medical Waste" as an
12 authorized waste category, while it does not expressly identify MediWaste's pyrolysis
13 ash, hydrated ash, char, biochar, or outgoing residue as an authorized waste category.

14 The unusual result is that the regulatory pathway for qualifying incoming medical waste
15 may be more readily identifiable, and potentially more desirable from a disposal
16 standpoint, than the pathway for the residue created by processing that same waste.

17 This distinction is particularly significant because the incoming waste stream authorized
18 by SW1900REV00 has already been limited by the permit. RCRA hazardous waste,
19 RCRA hazardous pharmaceutical waste, DEA controlled drugs, radioactive waste
20 above the specified screening level, bulk chemotherapy waste, and other identified
21 prohibited materials may not be accepted by MediWaste. The remaining permitted
22 incoming medical waste categories substantially overlap the medical waste for which
23 Nevada allows disposal at an appropriately permitted landfill.

1 The question is therefore not whether some hypothetical category of hazardous or
2 otherwise prohibited waste could be sent directly to the landfill. MediWaste is already
3 prohibited from accepting those materials under SW1900REV00. The relevant question
4 is whether the medical waste that MediWaste is authorized to accept could instead be
5 transported directly to the landfill under SW97REV05 and its approved operational plan,
6 and, if so, what enforceable provision requires that waste to be processed through
7 MediWaste's pyrolysis system rather than directly disposed of.

8 That question becomes particularly important because MediWaste may receive medical
9 waste from generators and transporters located anywhere in North America. If medical
10 waste imported into Nye County for processing can legally be disposed of directly at the
11 landfill, the record should establish what prevents the private processing facility from
12 redirecting that waste to the local disposal system if processing becomes unavailable,
13 interrupted, or economically undesirable.

14 SW1900REV00 authorizes MediWaste to receive medical waste, store that waste at the
15 Basin Avenue facility, and process it through the permitted system. The permit does not,
16 however, appear to establish that all incoming material must always be processed
17 through the MediWaste system before it can leave the facility, nor does the record
18 identified by Appellant establish what would occur if MediWaste received medical waste
19 but processing became unavailable, economically impracticable, interrupted for an
20 extended period, or otherwise was not performed.

21 The issue implicates the capacity and purpose of the local disposal system. MediWaste
22 is a private processing facility authorized to receive medical waste originating outside
23 Nye County and potentially throughout North America. The Pahrump Landfill is a locally

operated disposal facility with finite permitted capacity. If imported medical waste received by MediWaste could instead be redirected to that landfill, the practical effect could be to transfer a disposal burden from the private processing operation to the landfill, local government, and ultimately Nye County taxpayers.

That burden is greater than the volume of the medical waste alone. Nevada imposes a specific disposal requirement for special waste burial areas receiving medical waste. "A completed special waste burial area must be covered with a layer of suitable cover material compacted to a minimum uniform depth of 36 inches." NAC 444.646(2). Direct disposal of imported medical waste therefore consumes landfill capacity not only through the volume occupied by the medical waste itself, but also through the required three-foot layer of compacted suitable cover material over the completed special waste burial area. The potential diversion of substantial quantities of imported medical waste to the local landfill could consequently consume valuable permitted landfill capacity and shorten the useful operating life of a public disposal facility.

The permitting record should therefore establish whether the approvals granted to MediWaste create any pathway by which medical waste imported for processing could instead become a disposal burden on the landfill, local government, and taxpayers and, if so, what state and local approvals would be required before that could occur.

The same concern applies if MediWaste's operating model changes in the future. Nevada law prohibits operation of a solid waste management facility except pursuant to a permit issued by the solid waste management authority and requires compliance with the terms and conditions of that permit. NRS 444.553(2). The effectiveness of that protection depends upon what SW1900REV00 actually requires and prohibits.

1 If SW1900REV00 requires all accepted incoming medical waste to be processed
2 through the permitted pyrolysis system, the specific enforceable term establishing that
3 requirement should be identifiable. If no such requirement exists, the Commission
4 should determine what prevents the facility from functioning, in whole or in part, as a
5 storage, transfer, or routing point for medical waste destined for direct disposal
6 elsewhere.

7 A material change in the amount or type of solid waste managed at a disposal site, or in
8 the manner in which the waste is managed, may also implicate the permit modification
9 provisions of NAC 444.6435. Those provisions are important because certain
10 modifications may be subject to public notice and 30 days of public review.

11 The public reviewed and commented upon a proposed medical waste processing
12 facility. The record therefore raises the question whether a later operational change that
13 materially increases direct disposal of incoming medical waste, rather than processing it
14 through the permitted system, would require additional state or local approval and what
15 public notice, comment, hearing, and administrative review rights would attach to that
16 change.

17 This concern is reinforced by NDEP's own April 3, 2025 regulatory determination. NDEP
18 expressly warned MediWaste: "If there are changes to the process described, an
19 additional applicability determination will be required." NDEP therefore demonstrated its
20 own understanding that a material change in the process could require renewed
21 regulatory review. Nevada law separately requires the State Department of
22 Conservation and Natural Resources to "advise, consult and cooperate" with
23 municipalities in the formulation of plans for and establishment of solid waste

management systems. NRS 444.570(1)(a). Nevada law further recognizes the regulatory significance of changes to those systems by requiring municipal solid waste management plans to "be revised to reflect proposed changes in the solid waste management system." NRS 444.510(5).

Against that statutory framework, the issue is not merely whether NDEP informed Nye County that MediWaste's process had changed. The more consequential question is when the transformation became sufficiently substantial that NDEP should have advised, consulted, and cooperated with Nye County so that the County could determine whether the changed facility remained within the CUP it had approved or required further local review. If further CUP review was required, failure to bring the changed project back before the County could also have deprived the public of whatever notice, comment, hearing, and right to challenge or appeal would have accompanied that local review. NDEP should not be able to permit a substantially transformed state regulated operation without addressing whether that transformation altered the project previously reviewed and approved at the local level and, as a consequence, bypassed public rights that would otherwise attach to further local review. Accordingly, the record raises the following questions for Commission review:

1. What enforceable provision of SW1900REV00 requires medical waste accepted by MediWaste to be processed through the permitted pyrolysis system rather than redirected for direct disposal?
2. If SW1900REV00 contains no such requirement, what prevents MediWaste from transporting incoming medical waste to an appropriately permitted disposal facility without processing it?

- 1 3. Does landfill Permit SW97REV05 and its approved operational plan authorize
2 direct disposal of the medical waste categories MediWaste is permitted to
3 receive under SW1900REV00?
- 4 4. Given NDEP's statement in its "Treatment Collection and Disposal of Infectious
5 Medical Waste" Fact Sheet, under "Regulatory Framework," that "Nevada
6 regulations do not require treatment of medical waste" and that "[d]isposal in a
7 permitted landfill according to approved practices is acceptable," what regulatory
8 requirement would prevent qualifying medical waste accepted by MediWaste
9 from being transported directly to an authorized landfill rather than processed
10 through pyrolysis?
- 11 5. Did NDEP evaluate whether medical waste imported into Nye County for
12 processing by MediWaste could instead be disposed of at the landfill if the
13 MediWaste process becomes unavailable, interrupted, economically
14 impracticable, or otherwise is not used?
- 15 6. If direct disposal at the landfill is not authorized, what specific state or local
16 permit, operational plan provision, regulation, or other enforceable requirement
17 prevents it?
- 18 7. If direct disposal could become authorized through a modification or additional
19 approval, what state and local regulatory process would be required?
- 20 8. Would such a change require public notice, comment, hearing, or administrative
21 review under NAC 444.6435 or other applicable law?

- 1 9. What prevents MediWaste from functioning in whole or in part as a storage,
2 transfer, or routing facility for incoming medical waste if the permitted processing
3 system is not used?
- 4 10. Did NDEP evaluate the potential effect upon the permitted capacity and
5 operating life of the landfill if medical waste imported for processing by
6 MediWaste were instead directed to that facility, including the additional landfill
7 capacity consumed by the 36-inch compacted cover requirement imposed by
8 NAC 444.646(2)?
- 9 11. What enforceable provisions prevent a future change in MediWaste's operating
10 model from transferring disposal responsibility for imported medical waste from
11 the private processing facility to the landfill, local government, and Nye County
12 taxpayers?
- 13 12. Given the material difference between the earlier resource recovery description
14 and the operation ultimately permitted, did the public have adequate notice and
15 opportunity to comment upon the actual waste management and disposal model
16 authorized by SW1900REV00?
- 17 13. Given NDEP's April 3, 2025 determination that changes to MediWaste's process
18 could require "an additional applicability determination," and the State's statutory
19 duty to "advise, consult and cooperate" with municipalities under NRS 444.570(1)
20 (a), at what point did the substantial transformation of the MediWaste project
21 require NDEP to advise, consult, and cooperate with Nye County so that the
22 County could determine whether the changed facility remained within the CUP it
23 had approved or required further local review, and, if further local review was

1 required, whether the public was thereby entitled to renewed notice, an
2 opportunity to comment and be heard, and any right to challenge or appeal the
3 County's decision provided by applicable local and state law?

4 14. Does the administrative record contain reliable, probative, and substantial
5 evidence establishing the regulatory restrictions governing direct disposal of
6 incoming medical waste if the processing operation authorized by
7 SW1900REV00 is not used?

8 The issue is not whether MediWaste presently intends to bypass its permitted
9 processing system or dispose of incoming medical waste at the landfill. Appellant does
10 not allege that it presently does. The issue is whether NDEP's final permitting decision
11 establishes enforceable restrictions governing that possibility and whether NDEP
12 evaluated the reasonably foreseeable consequences if the processing operation is
13 unavailable, interrupted, or no longer economically viable.

14 The transformation of the project from the resource recovery model described earlier in
15 the record to an operation producing hydrated ash for disposal makes that
16 determination particularly important. It also raises the question of when that
17 transformation became sufficiently substantial that NDEP's statutory duty to advise,
18 consult and cooperate with local government required communication with Nye County
19 so that the County could determine whether the changed facility remained within the
20 CUP it had approved, whether further local review was required, and whether that
21 review would restore the public's corresponding rights to notice, comment, hearing, and
22 any applicable challenge or appeal. The final permitting decision should establish what
23 operation was actually approved, what MediWaste is required to do with incoming

1 medical waste, what it is prohibited from doing, and what additional regulatory process
2 would be required before the waste management model presented to the public could
3 materially change.

4 To the extent NDEP issued SW1900REV00 without determining and establishing
5 enforceable requirements governing whether incoming medical waste must be
6 processed through the permitted system, whether it may instead be directed to a
7 disposal facility, and what additional state and local approvals and public process would
8 be required for such a change, NDEP's final decision was affected by error of law,
9 clearly erroneous in view of the reliable, probative, and substantial evidence in the
10 whole record, and arbitrary or capricious or characterized by abuse of discretion. NRS
11 233B.135(3)(d) through (f).

12 Appellant respectfully requests that the Commission reverse NDEP's final decision. If
13 the Commission determines that remand is appropriate, Appellant further requests that
14 SW1900REV00 be held in abeyance so that it cannot be implemented or relied upon to
15 advance activities authorized by that permit while the matter requiring remand remains
16 unresolved.

1 **GROUND THIRTEEN**

2 CERTAIN MONITORED OPERATING LIMITS AND TESTING REQUIREMENTS
3 REQUIRE CLARIFICATION OF THEIR CORRESPONDING CORRECTIVE ACTION
4 AND SHUTDOWN REQUIREMENTS

5 After further review of the permitting record, Appellant narrows this Ground to the
6 specific monitoring, testing, and operating conditions for which the record does not
7 establish a corresponding objective feed cessation, shutdown, corrective action, or
8 resumption standard. Appellant acknowledges that AP4953-4771 establishes specific
9 automatic responses for certain conditions, including immediate shutdown of the indirect
10 burners at the specified pyrolysis chamber backpressure and a limiting switch that stops
11 the pyrolysis reaction when a power loss results in loss of thermal oxidizer controls. The
12 remaining issue is therefore not whether the permits contain any shutdown protections.
13 They do. The issue is whether comparable and enforceable operating consequences
14 were established for other critical conditions expressly regulated, monitored, or tested
15 by NDEP, including failure to maintain the minimum thermal oxidizer operating
16 temperature, failure of required stack performance testing, and unacceptable ash
17 characterization results.

18 The distinction is material. Monitoring identifies an operating condition. Testing
19 determines compliance at a particular time. Reporting communicates the result.
20 Corrective action may address a condition after it occurs. None of those requirements
21 necessarily establishes whether continued waste feed or continued processing is
22 permissible when a monitored condition or test result fails to meet an established
23 standard.

1 AP4953-4771 demonstrates that NDEP knew how to impose objective automatic
2 operating responses when it determined they were necessary. The permit requires the
3 indirect burners to immediately shut off when pyrolysis chamber backpressure reaches
4 the specified limit. It also requires a high and low pressure limiting switch that stops the
5 pyrolysis reaction when a power loss results in loss of thermal oxidizer controls.

6 The thermal oxidizer requirements present a different question. AP4953-4771 requires
7 the thermal oxidizer to operate at a minimum steady state temperature of 1,450°F and
8 requires the thermal oxidizer to reach at least 1,450°F before operation of the
9 associated pyrolysis unit begins. The permit also requires continuous monitoring of
10 thermal oxidizer temperature, recorded once each minute.

11 The record reviewed by Appellant does not appear to establish an equivalent automatic
12 feed cessation or shutdown requirement if the thermal oxidizer falls below the required
13 1,450°F minimum during an active pyrolysis batch. The permit establishes the minimum
14 temperature and continuously monitors compliance with it, but the regulatory
15 consequence of falling below that minimum during processing should be clear.

16 This question is particularly significant because NDEP itself identified loss of process
17 control as an issue before issuance of the permits. In its April 3, 2025 determination
18 concerning MediWaste's proposed process, NDEP's Bureau of Air Pollution Control
19 asked what would occur during an emergency, including a power loss "where controls
20 can't be operated," and what would happen to the emissions.

21 The final air permit addresses that particular power loss concern by requiring a limiting
22 switch that stops the pyrolysis reaction when power loss results in loss of thermal
23 oxidizer controls. That provision demonstrates both that NDEP considered loss of

1 control significant and that an objective operating response can be established when a
2 critical process condition occurs.

3 Nevada's solid waste regulations provide an additional substantive standard. "No solid
4 waste processing system may be allowed to cause health hazards, public nuisances or
5 otherwise cause or contribute to the impairment of the environment." NAC 444.668.

6 Nevada also requires approval of processing methods not otherwise specifically
7 provided for before operation. Complete plans, specifications, and design data for such
8 a processing method must meet the approval of the solid waste management authority
9 before the method is placed in operation. NAC 444.676.

10 Nevada law further provides NDEP with authority when solid waste management
11 activity "presents or may present a threat to human health, public safety or the
12 environment." NRS 444.592. NRS 444.594(1) provides for enforcement orders
13 identifying the violation or threat and prescribing corrective action.

14 Those enforcement authorities are important, but they serve a different function from
15 predetermined operating requirements. The ability to respond to a violation or threat
16 after it occurs does not itself tell the operator whether continued processing is
17 permissible when a monitored operating limit has already been exceeded.

18 The same distinction exists between reporting and shutdown. Nevada's air pollution
19 regulations require notification of excess emissions following a malfunction or upset and
20 require information concerning the malfunction, steps taken to remedy it, steps taken or
21 planned to prevent recurrence, and steps taken to limit the excess emissions. NAC
22 445B.232. Those requirements address reporting and response to an event, but do not

1 necessarily establish the immediate operating consequence when the condition first
2 occurs.

3 Nevada's Class II air permit regulations further require operating permits to contain, as
4 applicable, "Emission limitations and standards, including those operational
5 requirements and limitations that ensure compliance with the conditions of the operating
6 permit." NAC 445B.346(1). They separately require "[a]ll requirements for monitoring,
7 testing and reporting that apply to the stationary source." NAC 445B.346(2). The
8 regulation therefore distinguishes operational requirements and limitations from
9 monitoring, testing, and reporting requirements.

10 That distinction also applies to required stack emissions testing. AP4953-4771
11 establishes emission limits for multiple regulated pollutants, including hazardous air
12 pollutants encompassing dioxins and furans, and requires periodic performance testing
13 of the permitted pyrolysis units. Dioxin and furan emissions are determined using EPA
14 Reference Method 23.

15 The permit requires annual performance testing of four of the seven pyrolysis units, with
16 the units selected on a rotating basis. Dioxin and furan emissions are therefore
17 determined through periodic stack testing rather than continuous dioxin monitoring, and
18 an individual pyrolysis unit is not necessarily subjected to Method 23 testing every year.
19 The permit expressly establishes operational consequences for certain other monitored
20 conditions. For example, specified backpressure requires immediate burner shutdown,
21 loss of thermal oxidizer controls following power loss requires a limiting switch that
22 stops the pyrolysis reaction, and an opacity exceedance requires immediate corrective
23 action. The record reviewed by Appellant does not appear to establish a comparable

predetermined operating consequence if required stack performance testing demonstrates emissions exceeding an applicable permit limit, including dioxin and furan emissions.

NDEP can require monitoring, sampling, or testing, but the protection provided by that requirement ultimately depends upon what happens when the monitored condition or test result fails to meet the required standard. A failed performance test may constitute noncompliance and may subject the permittee to NDEP's enforcement authority. That does not by itself answer whether the affected unit may continue processing medical waste while the exceedance is investigated or corrected, whether processing must cease, when retesting must occur, or what demonstration of compliance is required before normal operation continues or resumes.

The frequency of Method 23 testing presents an additional question appropriate for Commission consideration. Appellant does not contend that Nevada law presently requires quarterly Method 23 testing. Rather, because dioxin and furan emissions are determined periodically, only four of seven units are performance tested annually, and an individual unit is not necessarily tested each year, Appellant asks whether more frequent Method 23 testing, including quarterly testing during an initial operating period, should be considered until the facility establishes a demonstrated record of compliance.

A related issue exists under SW1900REV00 concerning ash characterization. The permit establishes sampling and characterization requirements for solid ash residue, including analysis for PCDD/Fs and a compliance limit of 20 ng TEQ/kg dry weight. The permit also restricts offsite disposal until specified initial sampling requirements are satisfied.

1 The remaining question is what an unacceptable ash characterization result requires
2 operationally. If ash exceeds the applicable compliance limit, the record should clearly
3 establish whether processing may continue while additional residue is generated,
4 whether processing by the affected unit must cease, what corrective action is required,
5 what additional sampling or testing must occur, and what standard must be satisfied
6 before normal processing resumes.

7 A numerical compliance limit, monitoring requirement, or testing requirement provides
8 an important regulatory protection. Its effectiveness is strengthened when the
9 consequence of exceeding or failing the applicable standard is equally clear.

10 Accordingly, the record raises the following questions for Commission review:

- 11 1. If the thermal oxidizer falls below the required minimum steady state temperature
12 of 1,450°F during an active pyrolysis batch, may waste processing continue?
- 13 2. Does a thermal oxidizer temperature below 1,450°F require immediate cessation
14 of waste feed, shutdown of the affected pyrolysis unit, corrective action while
15 processing continues, or some other response?
- 16 3. Where in AP4953-4771, SW1900REV00, or the documents incorporated into
17 those permits is that operating response established?
- 18 4. If the thermal oxidizer falls below 1,450°F after pyrolysis has begun, what
19 happens to waste already undergoing processing and to process gases
20 generated while the minimum temperature cannot be maintained?
- 21 5. What conditions must be satisfied before normal processing may resume
22 following failure to maintain the minimum thermal oxidizer temperature?

- 1 6. If required stack performance testing, including EPA Reference Method 23
2 testing for dioxin and furan emissions, demonstrates emissions exceeding an
3 applicable permit limit, what enforceable requirement determines whether the
4 affected pyrolysis unit may continue processing medical waste or must cease
5 waste feed or operation?
- 6 7. Following a failed required stack performance test, what corrective action and
7 retesting are required, and what demonstration of compliance must be made
8 before normal operation may continue or resume?
- 9 8. Given that Method 23 testing is periodic, that only four of seven pyrolysis units
10 are performance tested annually, and that an individual unit is not necessarily
11 tested every year, should more frequent Method 23 testing, including quarterly
12 testing during an initial operating period, be required or considered until the
13 facility establishes a demonstrated record of compliance?
- 14 9. If ash characterization exceeds the applicable 20 ng TEQ/kg dry weight
15 compliance limit, may the affected pyrolysis unit continue processing and
16 generating additional residue?
- 17 10. What corrective action is required following an unacceptable ash characterization
18 result?
- 19 11. What additional sampling, testing, or other demonstration is required before
20 normal processing may continue or resume following such a result?
- 21 12. Where are the feed cessation, shutdown, corrective action, and resumption
22 requirements associated with an unacceptable ash result established as
23 enforceable permit conditions?

1 13. Does NDEP's authority under NRS 444.592 and NRS 444.594 to respond to a
2 violation or threat substitute for predetermined operating requirements applicable
3 when a monitored or tested compliance limit is exceeded?

4 14. What reliable, probative, and substantial evidence in the administrative record
5 establishes the intended operating response to these specific conditions?

6 After further review of the permitting record, Appellant has narrowed this Ground
7 substantially. Appellant does not contend that the remaining issues identified in this
8 Ground, standing alone, necessarily require reversal, suspension, or remand of
9 SW1900REV00. Appellant instead presents them for Commission review and
10 clarification because the record appears to establish specific monitoring, testing, or
11 compliance limits without equally clear operating consequences for certain
12 exceedances or failures.

13 Appellant further asks the Commission to consider whether more frequent Method 23
14 testing, including quarterly testing during an initial operating period, is warranted until
15 the facility establishes a demonstrated record of compliance. Clarification of these
16 requirements would establish whether continued processing is permissible, when feed
17 cessation or shutdown is required, what corrective action and retesting must occur, and
18 what conditions must be satisfied before operation may continue or resume.

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