

1 **BEFORE THE STATE ENVIRONMENTAL COMMISSION**

2 **STATE OF NEVADA**

3 **APPELLANT A.J. BROWN'S REPLY BRIEF**

4 **GROUND ONE**

5 **NDEP Issued the Final Permit While Substantive Components of the Compliance Evaluation**
6 **Remained Unresolved**

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

12 NAC 444.641 establishes a sequence. NDEP first determines whether an application is complete. If
13 complete, NDEP must then “evaluate the merits of the application to determine if the application is in
14 compliance with all applicable statutes and regulations.” NAC 444.641(2). Only upon completion of
15 that evaluation does NDEP proceed to the notice of intent, fact sheet and public review process. NAC
16 444.641(3).

17 That sequence matters.

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

20 Table 5 is expressly entitled:

21 “Hydrated Ash Waste Sampling Schedule [TBD]”

22 and identifies five sampling stages without establishing the sampling frequencies or durations for
23 those stages.

1 The Schedule of Compliance also requires future submission, completion or approval of matters
2 including:
3 an Ash Sampling Frequency Plan;
4 an Ash Characterization Plan;
5 financial assurance estimates and mechanisms;
6 wind related operational limitations or controls;
7 dust generation, accumulation and ignition risk controls;
8 emergency action planning;
9 fire suppression provisions;
10 24-hour hazardous material response provisions;
11 coordination with local fire departments and first responders;
12 SPCC/SWPP requirements;
13 containment details;
14 local approvals; and
15 other pre operational Schedule of Compliance requirements.

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

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

21 The issue is narrower.

22 Which of these deferred matters are merely administrative implementation details, and which
23 establish substantive operating, monitoring, safety, environmental, emergency response or financial

1 assurance requirements that should have been part of NDEP's compliance evaluation before NDEP
2 declared that evaluation complete and opened the 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 ng TEQ/kg dry
5 weight and identifies EPA Method 8290A for analysis. The permit therefore establishes an analytical
6 standard.

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

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

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

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

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

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

1 Financial assurance presents a similar issue.

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

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

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

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

15 **NDEP's and MediWaste's responses also sharpen a separate timing issue already inherent in**
16 **Ground One. NDEP states that the public comment period began April 1, 2026. Both**
17 **Respondents identify the revised application submitted April 2, 2026 as the application**
18 **ultimately approved and incorporated into Permit SW1900REV00. MediWaste characterizes**
19 **April 2, 2026 as the date its "final" application was submitted and states that NDEP conducted**
20 **public review following submission and acceptance of that application. The April 2 date,**
21 **however, establishes when the revised application was submitted. The record identified by**
22 **Respondents does not establish when NDEP completed its review of that submission, when**
23 **NDEP accepted it as the controlling application, or when NDEP completed the merits and**

compliance evaluation required by NAC 444.641(2). Those dates matter because public review had already begun on April 1, 2026. The issue is therefore not simply whether the April 2, 2026 application eventually became the application incorporated into Permit SW1900REV00. The issue is whether the administrative record establishes that NDEP completed the required substantive compliance evaluation of the application it ultimately approved before proceeding with the public review contemplated by NAC 444.641(3).

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

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

The result is a fundamental finality problem:

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

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

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

Those provisions establish an ordered process:

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

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

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

7 That difference affects more than timing.

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

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

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

19 That leaves a critical unanswered question:

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

1 **TEST QUESTIONS FOR THE COMMISSION'S USE**

2 The following questions are presented for the Commission's determination from the written
3 administrative record and are intended to permit determination without oral supplementation by
4 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
5 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
6 record does not establish the stated proposition by sufficient evidence and the identified issue
7 therefore remains unresolved. A FALSE finding should be considered by the Commission in
8 determining whether the challenged NDEP decision can be sustained and whether the Commission
9 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

10 1. **TRUE OR FALSE:** The administrative record establishes that NDEP completed the merits and
11 compliance evaluation required by NAC 444.641(2) before proceeding with the public review
12 contemplated by NAC 444.641(3).

13 2. **TRUE OR FALSE:** The administrative record establishes when NDEP reviewed the revised
14 application submitted April 2, 2026, when NDEP accepted it as the controlling application, and when
15 NDEP completed the merits and compliance evaluation required by NAC 444.641(2) for that
16 application.

17 3. **TRUE OR FALSE:** The administrative record establishes that NDEP completed the merits and
18 compliance evaluation required by NAC 444.641(2) for the revised application submitted April 2, 2026
19 before proceeding with public review that began April 1, 2026.

20 4. **TRUE OR FALSE:** The administrative record identifies which requirements deferred until after
21 issuance of Permit SW1900REV00 NDEP determined were merely administrative or ministerial and
22 which required substantive technical judgment or approval.

1 5. **TRUE OR FALSE:** The administrative record identifies the objective criteria NDEP applied in
2 determining that the application complied with all applicable statutes and regulations notwithstanding
3 substantive matters deferred for later submission, development, or approval.

4 6. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, the administrative record established
5 the sampling frequencies and durations for the five stages identified in Table 5, “Hydrated Ash Waste
6 Sampling Schedule [TBD].”

7 7. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, the administrative record contained an
8 Ash Sampling Frequency Plan and Ash Characterization Plan sufficiently complete for NDEP to
9 evaluate the substantive monitoring and characterization requirements ultimately imposed upon
10 MediWaste.

11 8. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, the administrative record established
12 the financial assurance amount, calculation, and mechanism necessary for NDEP to determine
13 compliance with the applicable financial assurance requirements.

14 9. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, the administrative record substantively
15 established the emergency action, fire suppression, 24-hour hazardous material response, first
16 responder coordination, wind, dust, ignition, and containment requirements necessary for NDEP's
17 compliance determination rather than leaving those substantive requirements for later development or
18 approval.

19 10. **TRUE OR FALSE:** The administrative record establishes that each substantive requirement
20 deferred until after issuance of Permit SW1900REV00 will receive public notice, access, comment,
21 hearing, and administrative review or appeal opportunities under NAC 444.6435 or another applicable
22 provision of Nevada law before becoming an enforceable substantive component of the permitted
23 operation.

11. **TRUE OR FALSE:** For every substantive deferred requirement that will not receive renewed public review, the administrative record identifies a procedure through which an interested person may review, comment upon, request a hearing concerning, and challenge NDEP's later substantive determination.

12. **TRUE OR FALSE:** The administrative record establishes that Permit SW1900REV00 was sufficiently complete for NDEP to conclude public review and begin the administrative appeal process without leaving substantive portions of the operating and compliance evaluation to later development and approval.

GROUND TWO

Deferred Approvals and the April 2, 2026 Application Deprived the Public of Meaningful Review, Comment, Hearing and Appeal

Ground One addresses whether NDEP completed the compliance evaluation required before public review and final permit issuance. Ground Two addresses the corresponding public consequence when substantive information or requirements are not available during the public review process but are later incorporated into the final permit or completed through later NDEP approval.

Nevada's permitting process proceeds from evaluation under NAC 444.641 to public notice and review, comment and hearing opportunity under NAC 444.6415, response to comments under NAC 444.6419, and a final permitting decision under NAC 444.6425. NAC 444.638 further provides that the solid waste regulations may not be interpreted in a manner that circumvents their provisions or makes them less effective.

A member of the public cannot meaningfully review a substantive operating standard, monitoring program, financial assurance mechanism, emergency response arrangement or other requirement

1 that does not yet exist. Nor can an appellant meaningfully challenge the substance of a later approval
2 during the appeal from the original permit if NDEP has not yet made that determination.

3 NDEP responds that it conducted public review, received public comments, held a public hearing,
4 responded to comments and ultimately issued Permit SW1900REV00. MediWaste likewise relies
5 upon the public comment period, public hearing, Fact Sheet and availability of administrative
6 materials as demonstrating that meaningful public participation occurred.

7 Those facts establish that a public participation process occurred. They do not, standing alone,
8 establish that the public had a meaningful opportunity to review the application NDEP ultimately
9 approved and all substantive requirements upon which the final permitting decision depended.

10 That distinction is particularly important because NDEP states that the public comment period began
11 April 1, 2026. The revised application was submitted April 2, 2026. NDEP states that the April 2, 2026
12 application was ultimately approved and incorporated into Permit SW1900REV00.

13 The word “ultimately” establishes the final result. It does not establish when NDEP reviewed the April
14 2, 2026 submission, when NDEP accepted it as the controlling application, when NDEP began
15 treating it as the application upon which its permitting decision would be based, or when the public
16 was given access to it in that capacity.

17 MediWaste similarly characterizes April 2, 2026 as the date its “final” application was submitted and
18 states that public review followed submission and acceptance of the application. But the April 2, 2026
19 date establishes submission. The record identified by Respondents does not establish the date of
20 NDEP's acceptance or the date on which the public was informed that the April 2, 2026 application
21 was the application NDEP would ultimately approve and incorporate into Permit SW1900REV00.

22 The April 2, 2026 application is therefore not a peripheral submission. It is the application NDEP
23 states was ultimately approved and incorporated into Permit SW1900REV00. Because NDEP states

1 that public review began April 1, 2026, the administrative record should establish when the April 2,
2 2026 application became available to the public, whether the public was informed that it was the
3 application being evaluated by NDEP, and what meaningful opportunity the public received to review
4 and comment upon it before the permitting decision became final.

5 MediWaste also points to the detail contained in Appellant's later Opening Brief as evidence that the
6 facility and permit were sufficiently defined to permit detailed public criticism. That does not resolve
7 the issue presented in Ground Two. The ability of an appellant to investigate the administrative record
8 and identify deficiencies after permit issuance does not establish what information was available to
9 the public when public review began, when particular substantive materials became available, or
10 whether the public was given a meaningful opportunity to review the application NDEP ultimately
11 approved before the public participation process concluded.

12 Ground Two also concerns substantive matters expressly deferred until after permit issuance.
13 Nevada's regulations distinguish routine technical corrections and administrative updates from
14 substantive permit modifications. NAC 444.6395(4) provides: "Routine technical corrections and
15 administrative updates shall not be deemed to be substantive modifications to permits." NAC
16 444.6435 separately identifies categories of changes that may warrant public notice and review,
17 including changes in the manner of waste management and substantive changes affecting permitted
18 design, monitoring, corrective action and financial assurance.

19 Appellant does not contend that every deferred submission automatically constitutes a substantive
20 modification. Nor does Appellant contend that every pre operational requirement must independently
21 undergo a new public hearing.

22 The narrower question is what happens when a later submission requires NDEP to exercise
23 substantive technical judgment and affirmatively approve a monitoring program, operating limitation,

1 financial assurance mechanism, emergency response requirement or other substantive condition that
2 was not established during the original public review.

3 The final permit does not establish that every such later substantive determination will necessarily
4 receive public notice, public access before approval, an opportunity for comment, an opportunity to
5 request a hearing, NDEP responses to those comments, and an opportunity to challenge the resulting
6 determination.

7 The possibility that some later change may qualify as a permit modification under NAC 444.6435
8 does not answer what process applies to a later substantive approval that NDEP does not classify as
9 a permit modification.

10 Preventing MediWaste from operating until a deferred requirement is approved is an important
11 safeguard, but it addresses a different question. It prevents operation before approval. It does not
12 itself restore the public's opportunity to review, comment upon and challenge the substance of a
13 requirement if NDEP develops or approves that requirement only after the original public review has
14 ended and Permit SW1900REV00 has become final.

15 The same principle applies to a public hearing. A hearing is meaningful only with respect to
16 information available for review. As stated in the original appeal, a hearing conducted before missing
17 substantive information exists does not cure the inability to review and comment upon that
18 information when it is later developed.

19 The filed Opening Brief also identified the potential relationship between later substantive changes
20 and local review under NRS 444.570(1)(a). Ground Two does not assume that every later approval
21 automatically requires renewed Nye County proceedings. If a later substantive change affects the
22 operation previously reviewed by Nye County, however, the record should establish whether

1 additional consultation or local review is required and what public participation rights accompany that
2 process.

3 The issue is therefore not whether NDEP provided some public participation. It did. The issue is
4 whether the administrative record establishes that the public had timely access to the application and
5 substantive requirements NDEP ultimately approved, and whether meaningful public participation and
6 challenge rights are preserved for substantive requirements left to later NDEP determination.

7 **TEST QUESTIONS FOR THE COMMISSION'S USE**

8 The following questions are presented for the Commission's determination from the written
9 administrative record and are intended to permit determination without oral supplementation by
10 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
11 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
12 record does not establish the stated proposition by sufficient evidence and the identified issue
13 therefore remains unresolved. A FALSE finding should be considered by the Commission in
14 determining whether the challenged NDEP decision can be sustained and whether the Commission
15 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

16 **1. TRUE OR FALSE:** The administrative record establishes the date on which NDEP accepted the
17 revised application submitted April 2, 2026 as the controlling application and the date on which that
18 application was made available to the public as the application NDEP would ultimately approve and
19 incorporate into Permit SW1900REV00.

20 **2. TRUE OR FALSE:** The administrative record establishes that the public was given meaningful
21 notice that the revised application submitted April 2, 2026 was the application NDEP was evaluating
22 for final approval.

1 3. **TRUE OR FALSE:** The administrative record establishes that the public received a meaningful
2 opportunity to review and comment upon the revised application submitted April 2, 2026 after its
3 submission and before NDEP's final permitting decision.

4 4. **TRUE OR FALSE:** The administrative record establishes that the public had access during the
5 applicable public review process to the substantive operating, monitoring, financial assurance,
6 emergency response and other requirements upon which NDEP's final permitting determination
7 depended.

8 5. **TRUE OR FALSE:** The administrative record identifies which deferred approvals NDEP considers
9 routine technical corrections or administrative updates and which NDEP considers substantive
10 regulatory determinations.

11 6. **TRUE OR FALSE:** The administrative record identifies objective legal or technical criteria NDEP
12 will use to distinguish routine or administrative later approvals from substantive later approvals
13 requiring additional public review.

14 7. **TRUE OR FALSE:** The administrative record establishes that each later approval requiring
15 substantive technical judgment by NDEP will receive public notice and access before NDEP makes
16 the substantive determination.

17 8. **TRUE OR FALSE:** The administrative record establishes that each later substantive determination
18 will provide interested persons an opportunity to submit comments and, where authorized by Nevada
19 law, request a public hearing before the determination becomes final.

20 9. **TRUE OR FALSE:** The administrative record establishes a procedure through which an interested
21 person may challenge or appeal each later substantive determination that did not exist during the
22 original public review and appeal period for Permit SW1900REV00.

1 10. **TRUE OR FALSE:** The administrative record establishes that substantive monitoring, financial
2 assurance, emergency response, operating limitation or waste management requirements may not be
3 established or materially altered through later NDEP approval without the public participation required
4 by applicable Nevada law.

5 11. **TRUE OR FALSE:** The administrative record establishes that, if a later substantive change
6 requires additional consultation with Nye County or further local approval, the applicable public notice,
7 review, hearing and challenge procedures will occur before MediWaste operates under that change.

8 12. **TRUE OR FALSE:** The administrative record establishes that the public participation process for
9 Permit SW1900REV00 preserved meaningful review, comment, hearing and challenge rights for the
10 revised application submitted April 2, 2026 that NDEP states it ultimately approved and incorporated
11 into Permit SW1900REV00, and for substantive requirements deferred to later NDEP determination.

12 **GROUND THREE**

13 **Emergency Response Planning and Coordination Do Not Establish Actual Local Response** 14 **Capability**

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

18 Those requirements recognize that emergency preparedness is a necessary component of the
19 permitted operation. But NDEP issued the final permit before the emergency response requirements
20 identified in the Schedule of Compliance were completed. Public review ended, the final permit was
21 issued and the administrative appeal period began while important emergency response matters
22 remained deferred until the pre operation period.

1 NDEP's and MediWaste's responses establish that emergency planning and coordination are
2 required before operations begin. That does not resolve the issue raised in Ground Three.

3 **Coordination is not the same thing as demonstrated response capability.**

4 Providing an emergency plan to a fire department does not establish that the fire department has the
5 personnel, training, protective equipment, apparatus, hazardous material capability, decontamination
6 capability or other resources necessary to execute that plan. Likewise, evidence that MediWaste
7 communicated or coordinated with local responders does not establish that the resulting emergency
8 arrangements are adequate or effective.

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

11 The distinction is particularly important because NDEP made emergency action planning, fire
12 suppression, hazardous material response and coordination with local first responders prerequisites
13 to operation. If those matters are sufficiently important that MediWaste cannot operate until the
14 applicable requirements are satisfied, the administrative record should establish what NDEP
15 evaluated concerning the actual capability necessary to respond to reasonably foreseeable incidents
16 at the facility.

17 The filed Opening Brief identified the capabilities at issue: trained personnel, appropriate personal
18 protective equipment, specialized hazardous material response capability, decontamination capability,
19 fire suppression resources, specialized equipment and apparatus, sufficient staffing, necessary
20 training and continuing readiness.

21 NAC 444.644 requires solid waste handling to be conducted in a manner that does not create a
22 health hazard, public nuisance or impairment of the environment. NAC 444.668 similarly addresses

1 the design, construction and operation of processing systems so as not to create health hazards,
2 public nuisances or impairment of the environment.

3 These provisions do not establish that Nye County must maintain any particular number of
4 responders, any particular apparatus or any particular level of hazardous material capability merely
5 because MediWaste received Permit SW1900REV00. They do establish that the consequences of
6 the permitted solid waste processing operation for human health and the surrounding environment
7 are relevant to NDEP's regulatory determination.

8 Nevada's broader hazardous materials emergency planning framework also recognizes a distinction
9 between possessing an emergency plan and possessing effective emergency response capability.

10 NDEP's own Chemical Accident Prevention Program materials similarly distinguish planning and
11 coordination from actual hazardous material response capability. Appellant does not contend that
12 CAPP independently governs Permit SW1900REV00. The comparison is relevant because it
13 demonstrates that emergency planning, coordination and actual response capability are separate
14 questions.

15 The distinction also has practical significance for the types of hazards potentially encountered by
16 responders. Technical guidance concerning hazardous material and infectious material response
17 emphasizes matters such as responder training, appropriate personal protective equipment,
18 contamination control, decontamination procedures and the ability to recognize and control exposure
19 hazards. Such technical guidance does not establish the legal standard governing Permit
20 SW1900REV00. Nevada law supplies that standard. The technical evidence is relevant to
21 determining what actual response capability means when evaluating whether a response plan can be
22 carried out safely and effectively.

1 Ground Three therefore does not ask the Commission to determine that Nye County lacks emergency
2 response capability. It asks whether the administrative record establishes what capability the facility
3 requires and whether that capability actually exists.

4 The issue is also not limited to existing capability. If Nye County does not presently possess some
5 capability reasonably necessary to respond to the facility as permitted, the next question is whether
6 operation of this private commercial facility will require local government to create, acquire, staff,
7 train, equip and continually maintain additional emergency response capability.

8 Those costs do not disappear because they are incurred by local government. If additional personnel,
9 training, PPE, hazardous material capability, decontamination equipment, fire suppression resources,
10 specialized apparatus or continuing readiness are necessary because of the facility, the permitting
11 record should identify those additional requirements, their initial and continuing costs, and who will
12 bear them.

13 This is also relevant to NRS 444.570(1)(a), which directs the State Department to advise, consult and
14 cooperate with municipalities in the formulation of plans for and establishment of solid waste
15 management systems. Ground Three does not contend that the statute requires Nye County to
16 approve NDEP's permitting decision. The question is whether NDEP evaluated and consulted
17 concerning any additional local emergency response capability and governmental burden created by
18 the facility before issuing Permit SW1900REV00.

19 Neither the existence of an emergency plan nor evidence of coordination, standing alone, answers
20 that question. The administrative record must establish the actual capability NDEP determined was
21 necessary, whether that capability exists, and, if additional capability is required, what resources are
22 necessary and who will provide and pay for them.

1 **TEST QUESTIONS FOR THE COMMISSION'S USE**

2 The following questions are presented for the Commission's determination from the written
3 administrative record and are intended to permit determination without oral supplementation by
4 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
5 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
6 record does not establish the stated proposition by sufficient evidence and the identified issue
7 therefore remains unresolved. A FALSE finding should be considered by the Commission in
8 determining whether the challenged NDEP decision can be sustained and whether the Commission
9 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

10 1. **TRUE OR FALSE:** The administrative record identifies the fires, hazardous material incidents,
11 equipment failures, releases, exposures or other emergencies NDEP considered reasonably
12 foreseeable for the facility as permitted.

13 2. **TRUE OR FALSE:** The administrative record identifies the personnel, training, personal protective
14 equipment, hazardous material capability, decontamination capability, fire suppression resources,
15 specialized equipment, apparatus, staffing and continuing readiness NDEP determined are
16 reasonably necessary to respond to those foreseeable emergencies.

17 3. **TRUE OR FALSE:** The administrative record establishes that Nye County's responding agencies
18 presently possess the personnel, training, equipment, hazardous material capability, decontamination
19 capability, fire suppression resources, staffing and continuing readiness NDEP determined are
20 reasonably necessary to respond to the facility as permitted.

21 4. **TRUE OR FALSE:** The administrative record contains evidence establishing not merely that
22 MediWaste provided emergency plans to local responders or coordinated with them, but that the

1 personnel, equipment, training, facilities and continuing response capability necessary to execute
2 those plans are actually available.

3 5. **TRUE OR FALSE:** The administrative record establishes that NDEP evaluated the adequacy and
4 effectiveness of the actual emergency response capability available for the risks NDEP identified for
5 the facility, rather than relying solely upon the existence of plans or evidence of coordination.

6 6. **TRUE OR FALSE:** The administrative record establishes that the emergency action plan, fire
7 suppression provisions, 24 hour hazardous material response provisions and required first responder
8 coordination received the substantive NDEP review or approval required before MediWaste may
9 commence operations.

10 7. **TRUE OR FALSE:** The administrative record establishes what additional personnel, equipment,
11 training, PPE, hazardous material capability, decontamination capability, fire suppression resources,
12 specialized apparatus or other resources, if any, Nye County would be required to create, acquire,
13 staff, train, equip or continually maintain because of the facility, the initial and continuing costs of any
14 such additional capability, who will bear those costs, and what evaluation or consultation with Nye
15 County NDEP conducted concerning those requirements before issuing Permit SW1900REV00.

16 **GROUND FOUR - SATISFIED BY RESPONDENTS' RESPONSES**

17 After reviewing NDEP's and MediWaste's responses and the applicable requirements, Appellant does
18 not believe Ground Four independently warrants relief and does not pursue it further in this Reply.

19 **GROUND FIVE**

20 NDEP ISSUED THE FINAL PERMIT WITHOUT ESTABLISHING HOW THE NATURAL GAS
21 REQUIRED BY THE PERMITTED OPERATING CONFIGURATION WOULD BE SUPPLIED OR
22 WHAT THE LIQUID PROPANE IDENTIFIED IN THE APRIL 2, 2026 APPLICATION WAS INTENDED
23 TO SUPPLY

1 Permit SW1900REV00 relies upon an air permitted equipment configuration that uses natural gas. Air
2 Pollution Operating Permit AP4953-4771 identifies seven pyrolysis systems. Each pyrolysis chamber
3 has four natural gas fired burners rated at 500,000 Btu/hr each, and each system has a thermal
4 oxidizer rated at 2,000,000 Btu/hr.

5 The operating conditions of Air Permit AP4953-4771 are more specific. The pyrolysis burners “may
6 consume only natural gas.” The thermal oxidizers “may consume only pyrolysis gases produced in
7 the pyrolysis chamber and natural gas.” The Air Permit also establishes a maximum allowable natural
8 gas consumption rate for each pyrolysis unit and its associated thermal oxidizer. Thus, natural gas is
9 not merely one possible fuel suggested by Appellant. It is an express operating component of the air
10 permitted configuration upon which Permit SW1900REV00 relies.

11 The April 2, 2026 solid waste application, however, states: “The utilities required for operation are
12 natural gas or liquid propane and 480-volt electrical power supply.”

13 The record therefore presents two related but distinct questions. First, how will the natural gas
14 required by the air permitted operating configuration actually be supplied? Second, what equipment,
15 process or operating function was the liquid propane expressly identified in the April 2, 2026
16 application intended to supply?

17 PUCN information reviewed by Appellant indicates that conventional natural gas utility service is not
18 available in Pahrump. That does not establish that MediWaste cannot obtain natural gas. Natural gas
19 potentially can be transported to the facility through compressed natural gas, liquefied natural gas or
20 another lawful supply system. Appellant's filed Opening Brief expressly acknowledged that possibility.
21 But that possibility creates rather than resolves the permitting question: What natural gas supply
22 method did NDEP actually evaluate before issuing Permit SW1900REV00?

1 NAC 444.641 establishes an ordered permitting process. After determining that an application is
2 complete, the solid waste management authority “shall evaluate the merits of the application” to
3 determine compliance with applicable statutes and regulations. NAC 444.641(2). Under NAC
4 444.641(3), “[u]pon completion of the evaluation,” the authority proceeds to the notice of intent, fact
5 sheet and public review process.

6 Ground Five does not contend that Nevada law requires MediWaste to possess an executed natural
7 gas contract, a designated utility or completed CNG or LNG infrastructure before a permit may issue.
8 The question is what fuel supply configuration NDEP actually evaluated when performing the merits
9 and compliance evaluation required by NAC 444.641 and what information concerning that
10 configuration was available during the public review that followed.

11 The administrative record should therefore establish the source of the natural gas contemplated by
12 NDEP and the physical infrastructure through which that natural gas would be supplied to 1850 E.
13 Basin Avenue. If trucked natural gas was contemplated, the record should identify the delivery,
14 unloading, storage, pressure regulation or vaporization system, as applicable, and what NDEP
15 evaluated concerning its operational and safety consequences. If trucked natural gas was not
16 contemplated, the record should identify the source and delivery system NDEP actually evaluated.

17 The capacity of that system also matters. Air Permit AP4953-4771 establishes natural gas
18 consumption limits for each pyrolysis unit and its associated thermal oxidizer. Appellant does not
19 assume that all seven systems necessarily will operate simultaneously at their maximum allowable
20 natural gas consumption rates. The relevant question is what maximum simultaneous natural gas
21 demand NDEP contemplated for the permitted facility and whether the supply system evaluated by
22 NDEP was demonstrated capable of satisfying that contemplated operating demand.

1 MediWaste responds that Appellant has not identified a solid waste regulation requiring an executed
2 fuel supply agreement, designated utility or completed compressed or liquefied natural gas delivery
3 system before permit issuance. MediWaste further argues that Appellant has not presented evidence
4 that the permitted system “cannot obtain or use its authorized fuel” and characterizes Appellant's
5 questions as concerning “possible delivery arrangements.”

6 Those arguments do not answer Ground Five. Appellant does not contend that MediWaste is
7 incapable of obtaining natural gas, and Appellant does not ask the Commission to require an
8 executed utility contract as an independent permit condition. Appellant asks what NDEP actually
9 evaluated before issuing Permit SW1900REV00. That distinction is important because NAC
10 444.641(2) requires NDEP to evaluate the merits and regulatory compliance of a complete
11 application, and NAC 444.641(3) places the notice and public review process after completion of that
12 evaluation.

13 Nor is the liquid propane issue hypothetical. MediWaste's own April 2, 2026 application states: “The
14 utilities required for operation are natural gas or liquid propane and 480-volt electrical power supply.”
15 Liquid propane therefore was introduced into the permitting record by MediWaste, not by Appellant.
16 The administrative record should identify what equipment, process or operating function the liquid
17 propane was intended to supply. If propane was contemplated as an operating fuel or utility for the
18 facility NDEP ultimately approved, the record should identify that intended use and establish what
19 NDEP evaluated concerning its delivery, storage, operational requirements and safety implications.
20 The record should also reconcile the April 2, 2026 application's identification of “natural gas or liquid
21 propane” with Air Permit AP4953-4771, under which the pyrolysis burners may consume only natural
22 gas and the thermal oxidizers may consume only process generated pyrolysis gases and natural gas.

1 The identified record does not establish an Air Bureau applicability determination specifically
2 evaluating the liquid propane provision contained in the April 2, 2026 solid waste application. Ground
3 Five does not ask the Commission to determine, without an engineering evaluation, whether propane
4 could lawfully or technically replace natural gas in any air permitted equipment. It asks what the
5 propane identified by MediWaste was intended to supply and what NDEP evaluated concerning that
6 proposed use.

7 MediWaste also characterizes the separate substitute fuel and equipment issue as “even further
8 removed from the challenged decision” and states that “[a] hypothetical future proposal therefore
9 cannot establish that NDEP erred in approving the presently identified configuration.” That argument
10 concerns Ground Six to the extent it addresses a genuinely future change in fuel or equipment. It
11 does not resolve Ground Five because natural gas and liquid propane both already appear in the
12 permitting record being reviewed here.

13 The same distinction is important for public participation. NAC 444.641(3) requires the notice of intent
14 to provide a 30-day period for public comment and requires a fact sheet describing the proposed
15 facility, proposed action, availability of application documents and procedure for public review and
16 comment. The regulatory sequence places that public process after completion of NDEP's merits and
17 compliance evaluation.

18 The issue is therefore not whether someone can devise a technically feasible natural gas or propane
19 supply system after Permit SW1900REV00 has been issued. The issue is what fuel supply
20 configuration NDEP actually evaluated before issuing the final permit, whether the evaluated natural
21 gas supply was demonstrated capable of satisfying the operating demand NDEP contemplated, what
22 the liquid propane expressly identified in the April 2, 2026 application was intended to supply, and

1 whether the public was afforded a meaningful opportunity to evaluate and comment upon the
2 configuration NDEP ultimately approved.

3 If NDEP evaluated a defined natural gas supply system and a defined use for the liquid propane
4 identified in the April 2, 2026 application, the administrative record should establish those facts. If the
5 record does not establish what NDEP evaluated, Respondents cannot resolve that omission merely
6 by characterizing Appellant's questions concerning their own application and permitted operating
7 configuration as hypothetical.

8 TEST QUESTIONS FOR THE COMMISSION'S USE

9 The following questions are presented for the Commission's determination from the written
10 administrative record and are intended to permit determination without oral supplementation by
11 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
12 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
13 record does not establish the stated proposition by sufficient evidence and the identified issue
14 therefore remains unresolved. A FALSE finding should be considered by the Commission in
15 determining whether the challenged NDEP decision can be sustained and whether the Commission
16 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

17 1. TRUE OR FALSE: The administrative record establishes the actual source of the natural gas
18 contemplated by NDEP to operate the equipment configuration authorized by Air Permit AP4953-
19 4771 and relied upon by Permit SW1900REV00.

20 2. TRUE OR FALSE: The administrative record identifies the physical infrastructure through which the
21 natural gas contemplated by NDEP will be delivered to and supplied at 1850 E. Basin Avenue.

1 3. TRUE OR FALSE: The administrative record establishes that NDEP evaluated the contemplated
2 natural gas source and delivery system as part of the merits and compliance evaluation required by
3 NAC 444.641(2) before proceeding to the public review process described in NAC 444.641(3).

4 4. TRUE OR FALSE: The administrative record establishes the maximum simultaneous natural gas
5 demand NDEP contemplated for the permitted operating configuration and establishes that the
6 natural gas supply system evaluated by NDEP is capable of satisfying that contemplated demand.

7 5. TRUE OR FALSE: If compressed natural gas, liquefied natural gas, truck delivery, onsite storage or
8 other nonutility infrastructure was contemplated to supply the facility, the administrative record
9 identifies that system and establishes what NDEP evaluated concerning its delivery, unloading,
10 storage, pressure regulation or vaporization requirements, as applicable, and its operational and
11 safety consequences before issuing Permit SW1900REV00.

12 6. TRUE OR FALSE: The administrative record identifies the equipment, process or operating
13 function for which the "liquid propane" expressly identified in the April 2, 2026 application was
14 intended to be used.

15 7. TRUE OR FALSE: The administrative record establishes that NDEP evaluated the intended use,
16 delivery, storage, operational requirements and safety implications of the liquid propane identified in
17 the April 2, 2026 application before issuing Permit SW1900REV00.

18 8. TRUE OR FALSE: The administrative record reconciles the April 2, 2026 application's statement
19 that the utilities required for operation include "natural gas or liquid propane" with Air Permit AP4953-
20 4771, under which the pyrolysis burners may consume only natural gas and the thermal oxidizers
21 may consume only process generated pyrolysis gases and natural gas.

1 9. TRUE OR FALSE: The administrative record establishes that an Air Bureau applicability
2 determination or other identified Air Bureau technical evaluation addressed the liquid propane
3 provision contained in the April 2, 2026 application before Permit SW1900REV00 was issued.

4 10. TRUE OR FALSE: The administrative record establishes that the public was provided sufficient
5 information during the public review process required by NAC 444.641(3) to identify and meaningfully
6 evaluate the natural gas source, delivery system and infrastructure contemplated by NDEP for the
7 permitted operating configuration.

8 11. TRUE OR FALSE: The administrative record establishes that the public was provided sufficient
9 information to understand and meaningfully comment upon the intended use of the liquid propane
10 identified in the April 2, 2026 application and its relationship to the natural gas operating restrictions
11 established by Air Permit AP4953-4771.

12 12. TRUE OR FALSE: The administrative record establishes that the fuel supply configuration NDEP
13 evaluated under NAC 444.641(2), the configuration presented for public review under NAC
14 444.641(3), and the fuel requirements of the equipment configuration relied upon by Permit
15 SW1900REV00 are consistent with one another.

16 **GROUND SIX**

17 **MEDIWASTE CIRCUMVENTED THE BAPC FUEL RESTRICTION BY REINTRODUCING ITS** 18 **DESIRED PROPANE ALTERNATIVE THROUGH THE SOLID WASTE PERMITTING PROCESS** 19 **WITHOUT AN IDENTIFIED BAPC DETERMINATION ADDRESSING THAT USE**

20 Ground Six follows directly from Ground Five but addresses a different and more sharply defined
21 issue. Ground Five addresses what NDEP evaluated concerning the natural gas supply required by
22 the permitted operating configuration and what the liquid propane identified in the April 2, 2026
23 application was intended to supply. Ground Six addresses the regulatory sequence after NDEP's

1 Bureau of Air Pollution Control evaluated the facility's air emissions equipment and ultimately
2 restricted the identified pyrolysis burners to natural gas only.

3 The chronology is significant.

4 On April 3, 2025, Jennifer Schumacher, EI, CPM, Chief of NDEP's Bureau of Air Pollution Control,
5 issued the "Nevada Division of Environmental Protection - Bureau of Air Pollution Control Response
6 to MediWaste Disposal LLC Air Permit Determination Request" to Ryan Oganessian, President of
7 MediWaste Disposal LLC. The determination was based upon MediWaste's February 28, 2025 draft
8 and unsigned Air Quality Operating Permit application.

9 That February 28, 2025 submission described the utilities required for the system as: "natural gas or
10 liquid propane, and 480-volt electrical power supply."

11 Thus, BAPC was aware at that stage that MediWaste had identified either natural gas or liquid
12 propane in describing the utilities required for the proposed operation.

13 Chief Schumacher also expressly informed MediWaste: "If there are changes to the process
14 described, an additional applicability determination will be required."

15 MediWaste subsequently submitted its Class II Air Quality Operating Permit application to BAPC on
16 April 24, 2025. BAPC conducted its technical review, including requests for additional information,
17 and ultimately produced a more restrictive fuel authorization. Air Quality Operating Permit AP4953-
18 4771 identifies seven pyrolysis systems. Each pyrolysis chamber uses four natural gas fired burners.

19 The operating conditions expressly provide that the pyrolysis burners "may consume only natural
20 gas." The associated thermal oxidizers may consume only pyrolysis gases produced in the pyrolysis
21 chamber and natural gas.

22 The identified record does not establish why BAPC ultimately restricted those burners to natural gas.

23 Appellant does not speculate about BAPC's technical reason, and no speculation is necessary. What

1 matters is the regulatory result: BAPC was aware that MediWaste previously had identified natural
2 gas or liquid propane, but the resulting air permit expressly authorized natural gas only for the
3 pyrolysis burners.

4 MediWaste thereafter submitted its April 2, 2026 Solid Waste application. That application again
5 expressly states: "The utilities required for operation are natural gas or liquid propane and 480-volt
6 electrical power supply."

7 **That statement is critical. MediWaste represented that liquid propane was "required for**
8 **operation." Yet the identified record does not establish what equipment, process or function**
9 **that required propane was intended to supply.**

10 **We do not know what MediWaste intended the propane to do. We do not know what NDEP**
11 **understood the propane would do. We do not know what technical evaluation NDEP**
12 **performed concerning that use. And we do not know how NDEP reconciled a Solid Waste**
13 **application stating that liquid propane was "required for operation" with an air permit that**
14 **restricted the identified pyrolysis burners to natural gas only.**

15 Those are not questions about a hypothetical future proposal. They arise directly from the April 2,
16 2026 application that NDEP ultimately approved.

17 The April 2, 2026 application was not an application to BAPC to amend AP4953-4771. It was
18 submitted through NDEP's Solid Waste permitting process and ultimately was incorporated into
19 Permit SW1900REV00.

20 The documented actions of MediWaste therefore remain significant. BAPC had evaluated the facility's
21 air emissions equipment and ultimately restricted the pyrolysis burners to natural gas only.

22 MediWaste subsequently presented its "natural gas or liquid propane" operating language through

1 NDEP's Solid Waste permitting process rather than obtaining an identified BAPC determination
2 explaining or approving the propane use reflected in the April 2, 2026 application.

3 In that procedural sense, MediWaste circumvented the BAPC permitting process. This argument does
4 not depend upon proving MediWaste's motive. It depends upon what the administrative record
5 establishes MediWaste actually did and what NDEP actually evaluated and approved.

6 MediWaste's Response states: "The Permit does not authorize an unidentified substitute-fuel
7 configuration." Appellant agrees. That admission sharpens the problem rather than resolving it. If the
8 Permit does not authorize an unidentified substitute-fuel configuration, then the administrative record
9 should identify why liquid propane nevertheless appears in the approved application as a utility
10 "required for operation," what it was intended to supply, what NDEP evaluated before approving that
11 application, and whether the appropriate BAPC review occurred.

12 MediWaste further states: "A hypothetical future proposal therefore cannot establish that NDEP erred
13 in approving the presently identified configuration." But liquid propane is not found only in a
14 hypothetical future proposal. It appears expressly in the April 2, 2026 application NDEP ultimately
15 approved.

16 Appellant does not contend that propane necessarily was intended to replace natural gas in the
17 pyrolysis burners. The record identified by Respondents does not establish its intended use. That
18 absence is the issue.

19 The administrative record therefore presents direct questions Respondents have not answered. Why
20 did MediWaste continue to identify liquid propane as a utility required for operation after the BAPC
21 permitting process resulted in an air permit restricting the pyrolysis burners to natural gas only? What
22 did MediWaste intend the propane to supply? What did NDEP understand the propane would supply?
23 What technical and regulatory evaluation did NDEP perform concerning that proposed use? Was that

1 use consistent with AP4953-4771? Did it constitute a change requiring further BAPC review? If not,
2 what determination established that no further BAPC review was required?

3 Those questions are particularly significant because Chief Schumacher had expressly informed
4 MediWaste on April 3, 2025: "If there are changes to the process described, an additional applicability
5 determination will be required."

6 Appellant does not ask the Commission to assume that the April 2, 2026 propane language
7 necessarily constituted such a change. Appellant asks the more fundamental question the
8 administrative record should answer: What did NDEP determine the propane was intended to supply,
9 was that use consistent with AP4953-4771, and did it constitute a change requiring further BAPC
10 review?

11 NDEP cannot answer those questions merely by pointing out that Permit SW1900REV00 does not
12 itself authorize an unidentified substitute fuel. NDEP approved an application expressly identifying
13 liquid propane as a utility required for operation. The issue is what NDEP understood it was approving
14 and what technical and regulatory evaluation preceded that approval.

15 NRS 444.553 requires an operator of a permitted solid waste management facility to comply with the
16 terms and conditions of the permit. NAC 444.644(3) addresses approval before a solid waste
17 handling or processing system may be placed into operation. The filed Opening Brief also identified
18 NAC 444.6435 in connection with changes that may require additional review, public notice or
19 hearing.

20 Ground Six does not ask the Commission to decide whether propane technically can be used in the
21 permitted equipment. Nor does it ask the Commission to decide that the propane language
22 necessarily required an additional BAPC applicability determination. Those questions depend first
23 upon determining what the propane was intended to supply.

1 The public participation issue follows directly. NAC 444.641 establishes an ordered permitting
2 process. NDEP's merits and compliance evaluation precedes the notice and public review process. If
3 the April 2, 2026 application identified liquid propane as a utility required for operation, the
4 administrative record should establish what that propane was intended to supply, what NDEP
5 evaluated concerning its use, how that use was reconciled with AP4953-4771, and whether that
6 information was available to the public during the legally required public review and comment
7 process.

8 If those determinations occurred only after public review began, or if the intended propane use was
9 never identified and evaluated at all, the Commission must determine whether the public actually
10 received meaningful notice and an opportunity to comment upon the same operating configuration
11 NDEP ultimately approved.

12 MediWaste cannot dispose of this issue by labeling propane a hypothetical future proposal. Propane
13 is expressly identified in the April 2, 2026 application. The unresolved questions are why MediWaste
14 continued to identify that operating alternative, what it was intended to supply, what NDEP evaluated
15 before approving it, whether the appropriate BAPC review occurred, and whether the public was
16 afforded the required opportunity to review and comment upon that same configuration.

17 **TEST QUESTIONS FOR THE COMMISSION'S USE**

18 The following questions are presented for the Commission's determination from the written
19 administrative record and are intended to permit determination without oral supplementation by
20 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
21 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
22 record does not establish the stated proposition by sufficient evidence and the identified issue
23 therefore remains unresolved. A FALSE finding should be considered by the Commission in

1 determining whether the challenged NDEP decision can be sustained and whether the Commission
2 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

3 1. **TRUE OR FALSE:** Air Quality Operating Permit AP4953-4771 expressly restricts the identified
4 pyrolysis burners to natural gas.

5 2. **TRUE OR FALSE:** MediWaste's April 2, 2026 Solid Waste application states that the utilities
6 “required for operation” include “natural gas or liquid propane and 480-volt electrical power supply.”

7 3. **TRUE OR FALSE:** The administrative record establishes what equipment, process or function
8 MediWaste intended the liquid propane identified in its April 2, 2026 application as “required for
9 operation” to supply.

10 4. **TRUE OR FALSE:** The administrative record establishes what NDEP understood that liquid
11 propane would supply and what technical and regulatory evaluation NDEP performed concerning that
12 proposed use before approving the April 2, 2026 application.

13 5. **TRUE OR FALSE:** The administrative record reconciles the April 2, 2026 Solid Waste application's
14 identification of “natural gas or liquid propane” with AP4953-4771's express requirement that the
15 identified pyrolysis burners “may consume only natural gas.”

16 6. **TRUE OR FALSE:** Before issuance of Permit SW1900REV00, the administrative record
17 establishes that BAPC evaluated the intended use of the liquid propane identified in the April 2, 2026
18 Solid Waste application and determined whether that use was consistent with AP4953-4771.

19 7. **TRUE OR FALSE:** The administrative record establishes whether the intended propane use
20 constituted a change requiring the additional applicability determination described in Chief Jennifer
21 Schumacher's April 3, 2025 written determination.

1 8. **TRUE OR FALSE:** If NDEP determined that the intended propane use did not require additional
2 BAPC review or authorization, the administrative record identifies the factual and technical basis for
3 that determination.

4 9. **TRUE OR FALSE:** The administrative record establishes that the public was provided sufficient
5 information during the legally required public review process to understand what the liquid propane
6 identified as “required for operation” was intended to supply, how that use related to AP4953-4771,
7 and what technical and regulatory evaluation NDEP performed concerning that use.

8 10. **TRUE OR FALSE:** The administrative record establishes that the operating configuration NDEP
9 evaluated, the configuration presented for public review, the April 2, 2026 application NDEP ultimately
10 approved, and the fuel restrictions imposed by AP4953-4771 are consistent with one another.

11 GROUND SEVEN

12 NDEP CONTINUED TO RELY UPON THE APRIL 10, 2024 COUNTY APPROVAL AFTER THE
13 PROJECT HAD CHANGED SIGNIFICANTLY

14 NDEP's Response substantially narrows the factual dispute in Ground Seven because NDEP
15 expressly admits the central fact:

16 “The Appellant is correct that the final permitted operation differs from the initial proposed project.”

17 NDEP then identifies substantial changes. It states that the initial May 2024 application focused upon
18 production of dimethyl ether (DME) and bio-oil as a revenue source, that MediWaste determined that
19 process was unattainable, that MediWaste engaged a new consultant, and that the application was
20 revised to a medical waste pyrolysis process producing hydrated ash.

21 That admission is consistent with the governmental record underlying Ground Seven.

1 The facility presented to Nye County when the Pahrump Regional Planning Commission approved
2 Conditional Use Permit CU-24-3 on April 10, 2024 was materially different from the facility NDEP
3 ultimately permitted.

4 The April 10, 2024 Nye County Staff Report describes a project involving production of residual
5 biochar and renewable fuel products. Renewable fuel products were to be sold as a commodity and
6 transported off site. Residual biochar was to be recycled or disposed of at a landfill. The process was
7 represented as occurring in the absence of oxygen with no combustion. Carbon ash, biochar and
8 renewable fuel were described as useful byproducts, and processed water was to be recycled and
9 reused.

10 The April 10, 2024 PRPC meeting record likewise describes an enclosed loop system, DME as an
11 end product, reuse of process water, no combustion emissions, residual biochar going to a landfill or
12 being recycled, renewable DME being piped into tanks for sale, and carbon residual ash being taken
13 to a landfill.

14 The project NDEP ultimately permitted is substantially different. NDEP's own Final Response to
15 Comments states that the earlier correspondence concerning DME and methanol "has been
16 overtaken by the revised application." Under the April 2, 2026 application, the process does not
17 generate DME, syngas, methanol or a liquid byproduct, uses no water and generates no wastewater,
18 and produces hydrated ash. The later regulatory configuration also involves seven pyrolysis units, 28
19 natural gas burners and seven natural gas thermal oxidizers.

20 The changes therefore were not a different name for essentially the same operation. They involved
21 the process itself, fuel and combustion equipment, process water, gaseous and liquid outputs, the
22 solid output, and the proposed disposition and beneficial use of products.

23 NDEP now expressly agrees that the final permitted operation differs from the initial proposed project.

1 The critical issue is what NDEP did about that admitted change before continuing to rely upon the
2 April 10, 2024 County approval.

3 NDEP's Response is direct. It titles its argument:
4 "NDEP's Permitting Process and Nye County's Conditional Use Permit Approvals are Independent
5 Processes."
6 NDEP nevertheless continues to rely upon the April 10, 2024 CUP and argues that "whether or not
7 the disposal processes changed after the CUP was granted, does not change MediWaste's status as
8 a medical waste treatment facility." NDEP then makes the categorical assertion:
9 "NDEP does not have a duty to consult with Nye County regarding the change in operations at the
10 MediWaste facility."

11 **That response does not establish that Nye County determined CU-24-3 covers the**
12 **substantially changed facility. It establishes that NDEP decided it did not need to ask Nye**
13 **County.**

14 That distinction is fundamental.

15 If, as NDEP argues, its permitting process and Nye County's CUP process are independent, then
16 NDEP's conclusion that the changed operation remains a "medical waste treatment facility" does not
17 itself establish the scope of Nye County's land use approval.

18 Nye County issued CU-24-3. NDEP did not.

19 Appellant does not ask the Commission to exercise Nye County's land use authority or decide for Nye
20 County whether a new or modified CUP is required. Appellant asks whether the administrative record
21 establishes that the governmental entity that actually issued CU-24-3 reviewed the substantially
22 changed project and determined that its April 10, 2024 approval remained applicable.

23 The identified record does not establish such a determination.

1 Nor does a Permit condition requiring MediWaste to maintain necessary local approvals answer the
2 question. A condition requiring local approval before operation does not establish that the particular
3 April 10, 2024 approval upon which NDEP relied actually covers the substantially changed facility.
4 NDEP's position creates an additional statutory question.

5 NRS 444.570(1)(a) directs the State Department to advise, consult and cooperate with municipalities
6 in the formulation of plans for and establishment of solid waste management systems. Ground Seven
7 does not contend that this provision necessarily requires NDEP to consult with Nye County
8 concerning every alteration to every solid waste permit.

9 But NDEP's categorical assertion that it "does not have a duty to consult with Nye County regarding
10 the change in operations at the MediWaste facility" does not resolve the statutory issue presented
11 here.

12 This was not an insignificant operational adjustment. NDEP admits that the final permitted operation
13 differs from the initial proposed project. NDEP's own record states that the earlier DME and methanol
14 information "has been overtaken by the revised application." The governmental records document
15 substantial changes to the process, products, fuel and combustion equipment, process water, outputs
16 and residue.

17 Yet NDEP continued to identify the April 10, 2024 County approval in connection with the changed
18 facility while simultaneously taking the position that it had no duty to consult the County concerning
19 those changes.

20 **NDEP cannot resolve that problem merely by saying the facility remained a "medical waste**
21 **treatment facility."** The question is not what general label can be placed on both projects. The
22 **question is whether the April 10, 2024 governmental approval applies to the substantially**
23 **different facility NDEP actually permitted.**

1 If Nye County reviewed the changed project and determined that CU-24-3 remained applicable, the
2 administrative record should establish that fact.

3 If NDEP determined that consultation with Nye County was unnecessary, the administrative record
4 should establish the legal and factual basis for that determination, including how NDEP reconciled its
5 categorical position with NRS 444.570(1)(a).

6 If neither determination exists, Respondents cannot cure the omission by simply pointing back to an
7 approval issued on April 10, 2024 for a substantially different project.

8 The issue is especially clear from NDEP's own admissions. NDEP says the project changed. NDEP
9 says the earlier process information was overtaken. NDEP says the State and County permitting
10 processes are independent. And NDEP says it had no duty to consult Nye County about the changed
11 operation.

12 **Those positions leave the central question unanswered: Who determined that Nye County's**
13 **April 10, 2024 approval still covers the substantially changed facility NDEP ultimately**
14 **permitted, and where is that determination in the administrative record?**

15 TEST QUESTIONS FOR THE COMMISSION'S USE

16 The following questions are presented for the Commission's determination from the written
17 administrative record and are intended to permit determination without oral supplementation by
18 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
19 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
20 record does not establish the stated proposition by sufficient evidence and the identified issue
21 therefore remains unresolved. A FALSE finding should be considered by the Commission in
22 determining whether the challenged NDEP decision can be sustained and whether the Commission
23 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

1 1. TRUE or FALSE: The facility presented to Nye County before approval of Conditional Use Permit
2 CU-24-3 on April 10, 2024 is materially the same facility configuration NDEP ultimately permitted
3 under Permit SW1900REV00.

4 2. TRUE or FALSE: NDEP acknowledges that the final permitted operation differs from the initial
5 proposed project.

6 3. TRUE or FALSE: The administrative record establishes that Nye County reviewed the substantial
7 changes between the project underlying the April 10, 2024 CUP and the facility NDEP ultimately
8 permitted.

9 4. TRUE or FALSE: The administrative record contains a determination by Nye County that
10 Conditional Use Permit CU-24-3 continues to authorize the substantially changed facility reflected in
11 the April 2, 2026 application and Permit SW1900REV00.

12 5. TRUE or FALSE: Before issuing Permit SW1900REV00, NDEP established that Conditional Use
13 Permit CU-24-3 remained applicable to the substantially changed facility configuration NDEP
14 ultimately approved.

15 6. TRUE or FALSE: NDEP's characterization of both the earlier and later projects as a "medical waste
16 treatment facility" establishes that Nye County determined its April 10, 2024 CUP covers the
17 substantially changed facility.

18 7. TRUE or FALSE: The administrative record establishes that Nye County was provided the revised
19 project information concerning the elimination of DME, methanol, renewable fuel production and
20 process water, together with the seven pyrolysis unit, 28 natural gas burner, seven thermal oxidizer
21 and hydrated ash configuration, and determined that no further County review or modification of CU-
22 24-3 was required.

1 8. TRUE or FALSE: The administrative record establishes that NDEP consulted or coordinated with
2 Nye County concerning whether the substantial changes to the facility affected the continuing
3 applicability of Conditional Use Permit CU-24-3 before issuing Permit SW1900REV00.

4 9. TRUE or FALSE: The administrative record establishes the factual and legal basis for NDEP's
5 categorical assertion that it "does not have a duty to consult with Nye County regarding the change in
6 operations at the MediWaste facility," including consideration of NRS 444.570(1)(a).

7 10. TRUE or FALSE: NDEP's determination that the earlier DME and methanol information "has been
8 overtaken by the revised application" is consistent with continued reliance upon the April 10, 2024
9 County approval without an identified County determination addressing the substantially revised
10 project.

11 11. TRUE or FALSE: A Permit condition requiring MediWaste to maintain necessary local approvals
12 establishes that Conditional Use Permit CU-24-3 itself applies to the substantially changed facility.

13 12. TRUE or FALSE: The administrative record establishes that, before issuing Permit
14 SW1900REV00, either Nye County determined that CU-24-3 continued to cover the substantially
15 changed project or NDEP established a factual and legal basis for relying upon that County approval
16 without further consultation with Nye County.

17 GROUND EIGHT

18 THE APPLICATION RECORD DOES NOT ESTABLISH THAT THE PUBLIC REVIEWED THE SAME
19 APPLICATION NDEP ULTIMATELY APPROVED AND INCORPORATED INTO PERMIT
20 SW1900REV00

21 NDEP's Response resolves one portion of Ground Eight but sharpens the more consequential issue.
22 NDEP explains that the reference to Application v7.0 was a naming error by MediWaste's consultant,
23 Trinity, and that the applications relevant to this appeal are v5.0 and v6.0. Appellant accepts that

1 explanation for purposes of this Reply. The version number itself is therefore no longer the central
2 issue.

3 The dates are.

4 NDEP states that MediWaste submitted an application on January 14, 2026, identified as v5.0. NDEP
5 further states that on March 18, 2026, it sent MediWaste comments concerning that application,
6 including comments regarding the fire suppression plan, financial assurance, and an ash sampling
7 frequency plan.

8 NDEP states that MediWaste responded to those comments on April 2, 2026. According to NDEP,
9 MediWaste corrected the identified location of the fire suppression system, addressed financial
10 assurance, included a draft Ash Sampling Frequency Plan, and submitted revised Application v6.0.

11 NDEP then states:

12 “As NDEP was satisfied with MediWaste’s comments and v6.0 of the draft application, they
13 proceeded to hold a robust public comment period regarding the application.”

14 NDEP identifies that public comment period as beginning April 1, 2026.

15 The chronology therefore presents a direct administrative record question.

16 The public comment period began April 1, 2026. The revised Application v6.0 was submitted April 2,
17 2026. NDEP states that it was satisfied with MediWaste's April 2 response and v6.0. NDEP further
18 states that v6.0 “was the permit application ultimately approved by NDEP and incorporated into the
19 Permit.”

20 The April 2, 2026 application therefore was not a peripheral submission. It was the application NDEP
21 ultimately approved and incorporated into Permit SW1900REV00.

1 The April 2, 2026 application could not have been the application upon which NDEP completed its
2 merits and compliance evaluation before public review began on April 1, 2026 because that
3 application had not yet been submitted.

4 That chronology directly implicates the ordered procedure established by NAC 444.641.

5 Under NAC 444.641(2), once the solid waste management authority determines an application is
6 complete, the authority “shall evaluate the merits of the application” to determine whether the
7 application complies with all applicable statutes and regulations.

8 NAC 444.641(3) then provides:

9 “Upon completion of the evaluation,”

10 the solid waste management authority shall prepare and issue the notice of intent to issue or deny the
11 permit and the factual sheet initiating the public review process.

12 NAC 444.641(3)(a)(4) further requires the notice to describe the procedure for obtaining copies of the
13 documents and comments submitted with the application. NAC 444.641(3)(b) requires the factual
14 sheet to describe the proposed facility, proposed action, availability of documents submitted with the
15 application, and procedure for public review and comment.

16 NAC 444.6415 then gives interested persons the opportunity during the public comment period to
17 submit written comments or request a public hearing.

18 The regulatory sequence is therefore significant. Evaluation of the merits and compliance of the
19 application precedes issuance of the notice initiating public review. Public review is then conducted
20 with access to the application documents upon which NDEP proposes to act.

21 NDEP's own Response does not establish that this sequence occurred with respect to the April 2,
22 2026 application it ultimately approved.

1 NDEP's Response contains an additional statement making the chronology even more significant. In
2 defending compliance with NAC 444.641, NDEP states that the permitting process "was initiated by
3 MediWaste on April 1, 2026." NDEP then describes MediWaste's April 2 response to its outstanding
4 comments, including the revised Application v6.0, and states:
5 "NDEP was satisfied with the response and v6.0 of the permit application, so they proceeded with a
6 Public Notice and Request for Comment."
7 But NDEP has already established that public comment began April 1, 2026.
8 Those statements do not establish when NDEP reviewed the April 2 application, when NDEP
9 determined that it satisfactorily resolved the March 18 comments, when NDEP accepted it as the
10 controlling application, when NDEP completed its merits and compliance evaluation, or when the
11 complete April 2 application became available to the public.
12 Those dates matter because NDEP ultimately approved that application and incorporated it into
13 Permit SW1900REV00.
14 The substance of the April 2 submission also matters.
15 According to NDEP's own Response, its March 18 comments concerned the fire suppression plan,
16 financial assurance, and ash sampling frequency plan. MediWaste's April 2 response corrected the
17 location of the fire suppression system, addressed financial assurance, and included a draft Ash
18 Sampling Frequency Plan with revised Application v6.0.
19 The April 2 submission therefore was not merely a correction to the version number. It responded to
20 substantive matters raised during NDEP's review.
21 Appellant's Opening Brief raised this precise public review problem. It asked what application NDEP
22 had evaluated when public review began April 1, 2026, whether the April 2, 2026 v6.0 application was
23 available during the comment period, when and where it was available, and most importantly whether

1 the public was afforded an opportunity to review and comment upon the same application NDEP
2 ultimately incorporated into Permit SW1900REV00.

3 NDEP's Response now establishes that the April 2, 2026 v6.0 application was in fact the application
4 ultimately approved and incorporated into the Permit. But NDEP's Response does not establish that
5 this same application had undergone the merits and compliance evaluation required by NAC
6 444.641(2) before public review began April 1.

7 Nor does NDEP's Response establish when the complete April 2 application became publicly
8 available or what notice informed the public that a revised controlling application had been submitted
9 after public comment had already begun.

10 The fact that members of the public could continue submitting comments after April 2 does not
11 resolve those questions.

12 The issue is not merely whether the calendar contained days after April 2 during which comments
13 could physically be submitted. The issue is whether NDEP followed the regulatory sequence and
14 whether interested persons were afforded meaningful review of the same application NDEP
15 evaluated, ultimately approved, and incorporated into the final Permit.

16 Similarly, the July 7, 2026 public hearing does not itself establish what application was made
17 available when public review began, when the April 2 application became available, whether the
18 public was notified of the revised controlling application, or whether NDEP completed its merits and
19 compliance evaluation before initiating the public review process required by NAC 444.641(3).

20 MediWaste states that its "final" application was submitted April 2, 2026 and argues that public review
21 followed submission and acceptance of that application. But the April 2 date establishes when the
22 revised application was submitted. It does not establish when NDEP reviewed it, when NDEP
23 accepted it as the controlling application, when NDEP completed the merits and compliance

1 evaluation required by NAC 444.641(2), or when the complete application became available for public
2 review.

3 Those are matters the administrative record must establish.

4 NDEP has therefore answered the least consequential portion of Ground Eight by explaining the v7.0
5 designation.

6 It has not answered the central issue raised in Appellant's appeal and Opening Brief.

7 **NDEP's own chronology now establishes that public comment began April 1, 2026; revised**
8 **Application v6.0 was submitted April 2, 2026 in response to outstanding NDEP comments;**
9 **NDEP thereafter became satisfied with that response and v6.0; and v6.0 was ultimately**
10 **approved and incorporated into Permit SW1900REV00.**

11 The Commission should therefore determine from the administrative record whether NDEP
12 completed the required evaluation of the application it actually approved before proceeding with
13 public review and whether the public received a meaningful opportunity to review and comment upon
14 that same application.

15 TEST QUESTIONS FOR THE COMMISSION'S USE

16 The following questions are presented for the Commission's determination from the written
17 administrative record and are intended to permit determination without oral supplementation by
18 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
19 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
20 record does not establish the stated proposition by sufficient evidence and the identified issue
21 therefore remains unresolved. A FALSE finding should be considered by the Commission in
22 determining whether the challenged NDEP decision can be sustained and whether the Commission
23 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

- 1 1. TRUE or FALSE: The administrative record identifies the complete application that was available to
2 the public when the public comment period began on April 1, 2026.
- 3 2. TRUE or FALSE: Revised Application v6.0, submitted April 2, 2026 and ultimately incorporated into
4 Permit SW1900REV00, had been submitted to NDEP before the public comment period began on
5 April 1, 2026.
- 6 3. TRUE or FALSE: The administrative record establishes the date on which NDEP completed its
7 review of the April 2, 2026 Application v6.0.
- 8 4. TRUE or FALSE: The administrative record establishes the date on which NDEP determined that
9 the April 2, 2026 submission satisfactorily resolved NDEP's outstanding March 18, 2026 comments
10 and accepted Application v6.0 as the controlling application.
- 11 5. TRUE or FALSE: The administrative record establishes that NDEP completed the merits and
12 compliance evaluation required by NAC 444.641(2) for the April 2, 2026 Application v6.0 before
13 proceeding with the public review required by NAC 444.641(3).
- 14 6. TRUE or FALSE: The administrative record establishes the date on which the complete April 2,
15 2026 Application v6.0 became available to the public.
- 16 7. TRUE or FALSE: The administrative record establishes that the public was notified that the April 2,
17 2026 Application v6.0 was the controlling application NDEP proposed to approve and was informed
18 how to obtain and review that application.
- 19 8. TRUE or FALSE: The administrative record establishes that the public was afforded a meaningful
20 opportunity to review and comment upon the complete April 2, 2026 Application v6.0 after it was
21 submitted and accepted by NDEP.

9. TRUE or FALSE: The administrative record establishes that the fire suppression, financial assurance, and ash sampling matters addressed through the April 2, 2026 submission were available for meaningful public review in the form ultimately evaluated by NDEP.

10. TRUE or FALSE: The administrative record establishes that the application subjected to NDEP's completed merits and compliance evaluation under NAC 444.641(2) was the same application made available for meaningful public review and comment under NAC 444.641(3).

11. TRUE or FALSE: The administrative record establishes that the application subjected to public review was the same April 2, 2026 Application v6.0 NDEP ultimately approved and incorporated into Permit SW1900REV00.

12. TRUE or FALSE: The administrative record establishes compliance with the ordered process required by NAC 444.641, including completion of NDEP's merits and compliance evaluation of the controlling application before proceeding with public review of that application.

GROUND NINE

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

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

Those provisions create an unresolved operational distinction. NAC 444.600 defines pathological wastes as human and animal remains consisting of carcasses, organs and solid organic waste from hospitals, laboratories and similar sources. NAC 444.608 separately provides that "Putrescible" means capable of being decomposed by microorganisms with sufficient rapidity as to cause

1 nuisances from odors or gases. Nothing in those definitions establishes that pathological waste is
2 categorically nonputrescible.

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

6 That statement assumes the condition that requires technical support. SW1900REV00 authorizes
7 biological material consisting of human or animal body parts, organs, tissues, surgical specimens and
8 other pathological material, while separately prohibiting waste based upon its capacity for microbial
9 decomposition. Stating that putrescible waste will not be received does not establish how NDEP
10 determined that the pathological waste authorized by the Permit will be nonputrescible when received
11 or how that distinction will be maintained during actual facility operations.

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

18 The Permit language concerning formaldehyde, formalin or other preservatives does not resolve that
19 problem. Requiring preservatives to be decanted when they are associated with pathological waste
20 does not establish that every pathological item accepted by MediWaste was previously preserved or
21 completely fixed. Nor does the Permit establish who performs the required decanting, where or when
22 it occurs, how completion is verified, what documentation demonstrates compliance, or what

1 evidence concerning the prior preservation or fixation of the pathological material must accompany
2 the waste.

3 Federal public health guidance demonstrates why those omissions are technically significant. CDC
4 guidance concerning formalin fixed tissue describes fixation as a controlled process involving such
5 factors as tissue dimensions, fixative concentration, fixative volume and exposure time. CDC
6 protocols specify 10 percent neutral buffered formalin, controlled tissue dimensions, adequate fixative
7 volume and defined fixation periods. CDC guidance also provides that fixed wet tissue not
8 subsequently paraffin embedded may be transferred to 70 percent ethanol for longer term
9 preservation. Those protocols demonstrate that fixation and continued preservation are conditions
10 established through identifiable procedures rather than conditions that can be presumed merely
11 because tissue may previously have been exposed to formalin or another preservative.

12 The distinction is particularly important for whole organs, body parts and larger tissue masses
13 expressly authorized by SW1900REV00. Fixative penetration occurs progressively through tissue. A
14 specimen may therefore have an adequately fixed exterior while internal tissue has not been equally
15 exposed to the preservative. SW1900REV00 contains no requirement that MediWaste know the
16 fixation history of an incoming specimen, verify complete fixation, or otherwise establish that the
17 material has been rendered nonputrescible before any preservative is decanted.

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

1 The record identified by Appellant does not establish how NDEP determined that 15 days of
2 unrefrigerated onsite storage was appropriate for the pathological waste expressly authorized by
3 SW1900REV00. It does not identify what NDEP considered concerning tissue type or size, prior
4 preservation, degree of fixation, preservative concentration, fixation time, completeness of
5 preservative penetration, condition of the material when received, or the effect of storage temperature
6 after any preservative is decanted. Nor does the record identified by Appellant identify a study,
7 professional standard, technical analysis or other evidence establishing that the authorized
8 pathological waste will remain nonputrescible for the permitted 15-day storage period without
9 refrigeration or temperature controls.

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

16 The 15-day limitation begins only when waste is received at the Pahrump facility. The broader
17 generation-to-treatment period, including prior storage, collection, transfer, staging and interstate
18 transportation, is addressed separately in Ground Ten.

19 EPA and WHO technical guidance further demonstrate that time, temperature and biological condition
20 are recognized considerations in management of pathological and health-care waste. Those
21 materials are not offered as Nevada regulatory requirements or as establishing a particular
22 refrigeration temperature that NDEP was required to impose. They provide technical context for
23 evaluating whether NDEP established a sufficient basis for allowing the pathological waste authorized

1 by SW1900REV00 to remain onsite without refrigeration or an enforceable maximum temperature for
2 as long as 15 days.

3 The issue is not limited to odor or nuisance conditions. Biological material that has not been
4 completely fixed or otherwise rendered biologically inactive may retain microorganisms. Increased
5 temperature and extended storage can affect microbial growth and decomposition. Subsequent
6 handling of deteriorated biological material can create exposure pathways through direct contact,
7 contaminated surfaces, droplets or aerosols depending upon the organisms present and the manner
8 in which the material is handled.

9 Appellant does not contend that heat itself creates airborne disease, that every pathological specimen
10 contains an infectious organism, or that every handling event will generate infectious aerosols. The
11 relevant issue is whether NDEP evaluated the foreseeable consequences of storing and
12 subsequently handling biological material whose fixation, preservation, temperature and condition are
13 not established by objective Permit requirements.

14 That issue is directly connected to Nevada's governing standards. NAC 444.644 requires solid waste
15 to be stored, collected, treated and processed by means that do not create a health hazard, public
16 nuisance or impairment of the environment. NAC 444.660 and NAC 444.668 likewise establish
17 health, nuisance and environmental protections applicable to waste handling and processing.

18 The question therefore is not whether Nevada law categorically requires refrigeration of all
19 pathological waste. The question is whether NDEP established an objective, technically supported
20 and enforceable means of ensuring that the pathological waste expressly authorized by
21 SW1900REV00 remains within the Permit prohibition against putrescible waste and is stored and
22 handled consistently with Nevada's applicable health, nuisance and environmental protection
23 requirements.

1 That question becomes especially important if material changes condition after acceptance.

2 A receiving employee may determine that pathological material is acceptable when it arrives. But

3 NAC 444.608 defines putrescibility according to the material's capacity for microbial decomposition,

4 not according to the classification assigned to the container when it entered the facility.

5 If pathological waste accepted as nonputrescible subsequently begins decomposing, producing odor

6 or gas, or otherwise satisfies the definition of putrescible waste during the permitted storage period,

7 the identified record does not establish what objective condition triggers mandatory corrective action

8 or what specific corrective action Permit SW1900REV00 requires MediWaste to take.

9 Simply declaring the accepted waste stream “nonputrescible” therefore does not establish how that

10 distinction will be determined, documented, maintained and enforced for human and animal tissue

11 during actual facility operations.

12 **TEST QUESTIONS FOR THE COMMISSION'S USE**

13 The following questions are presented for the Commission's determination from the written

14 administrative record and are intended to permit determination without oral supplementation by

15 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative

16 record establishes the stated proposition by sufficient evidence. FALSE means the administrative

17 record does not establish the stated proposition by sufficient evidence and the identified issue

18 therefore remains unresolved. A FALSE finding should be considered by the Commission in

19 determining whether the challenged NDEP decision can be sustained and whether the Commission

20 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

21 **1. TRUE or FALSE:** Permit SW1900REV00 or the incorporated application establishes objective

22 criteria distinguishing pathological waste authorized for receipt from the same biological material

23 when it satisfies the definition of prohibited putrescible waste under NAC 444.608.

1 2. **TRUE or FALSE:** The administrative record establishes the technical basis upon which NDEP
2 determined that the human or animal body parts, organs, tissues and surgical specimens authorized
3 by Permit SW1900REV00 will be nonputrescible when received.

4 3. **TRUE or FALSE:** Permit SW1900REV00 or the incorporated application requires inspection,
5 documentation or other verification sufficient to establish at receipt that incoming pathological waste
6 is nonputrescible and identifies who must make and document that determination.

7 4. **TRUE or FALSE:** If prior fixation or preservation is relied upon to establish that pathological waste
8 is nonputrescible, the administrative record establishes objective criteria for determining the
9 adequacy of that fixation or preservation, including for whole organs, body parts and larger tissue
10 masses.

11 5. **TRUE or FALSE:** The administrative record establishes a scientific or technical basis for NDEP's
12 determination that pathological waste authorized by Permit SW1900REV00 may remain onsite
13 without refrigeration, a maximum storage temperature or continuous temperature monitoring for as
14 long as 15 days after receipt while remaining nonputrescible and satisfying the applicable health,
15 nuisance and environmental protection requirements.

16 6. **TRUE or FALSE:** If pathological waste accepted as nonputrescible subsequently decomposes,
17 produces odor or gas, or otherwise satisfies the definition of putrescible waste under NAC 444.608
18 during onsite storage, an enforceable condition of Permit SW1900REV00 identifies the condition
19 requiring immediate corrective action and specifies what action MediWaste must take.

20 7. **TRUE or FALSE:** The administrative record establishes that NDEP evaluated the effect of
21 decanting formaldehyde, formalin or other associated preservatives upon the continued condition of
22 pathological waste during the permitted onsite storage period.

1 8. **TRUE or FALSE:** The administrative record establishes that NDEP considered tissue type and
2 size, preservation history, degree of fixation, condition upon receipt, storage temperature and
3 permitted storage duration in determining that refrigeration, a maximum storage temperature and
4 continuous temperature monitoring were unnecessary.

5 9. **TRUE or FALSE:** Permit SW1900REV00 or the incorporated application establishes enforceable
6 procedures for identifying and responding to pathological waste that develops decomposition, odor,
7 gas or other conditions during storage that cause it to become prohibited putrescible waste or create
8 a health hazard, public nuisance or impairment of the environment.

9 10. **TRUE or FALSE:** The administrative record establishes how compliance with the prohibition
10 against putrescible waste will be objectively determined, documented, maintained and enforced
11 throughout receipt and permitted onsite storage of the pathological waste authorized by Permit
12 SW1900REV00.

13 **This is the version I would treat as final.** It preserves the approved Ground Nine, keeps Ground
14 Ten's generation-to-treatment issue separate, preserves the CDC/EPA/WHO technical support,
15 avoids claiming those agencies create Nevada requirements, preserves the airborne/infectious-
16 exposure distinction correctly, and incorporates the final TRUE/FALSE questions, particularly the
17 important corrective-action Question 6.

18 GROUND TEN

19 THE PERMIT DOES NOT ESTABLISH A MAXIMUM GENERATION-TO-TREATMENT AGE FOR
20 MEDICAL AND PATHOLOGICAL WASTE

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

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

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

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

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

8 California expressly includes certain pathology waste within its definition of biohazardous waste,
9 including human body parts, surgery specimens and tissues that meet the statutory criteria, including
10 qualifying material that has been fixed in formaldehyde or another fixative. Cal. Health & Safety Code
11 § 117690(b)(2)(A).

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

15 Thus, qualifying biohazardous waste, including pathology waste, may already have undergone lawful
16 offsite storage in California before being transported interstate to Nevada. Transportation time may
17 then occur before the waste reaches the Pahrump facility.

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

20 Appellant does not contend that every shipment received by MediWaste will have been stored in
21 California for seven days. California provides a concrete regulatory example demonstrating that
22 waste may already have undergone lawful storage before interstate transportation and before

1 MediWaste's separate Pahrump storage period begins. Waste originating in or passing through other
2 jurisdictions may be subject to different storage requirements.

3 The Permit therefore does not establish a maximum cumulative period encompassing generation,
4 prior storage, collection, transfer, staging, interstate transportation, Pahrump receipt and Pahrump
5 storage before processing.

6 NDEP's response does not resolve that issue by limiting its regulatory concern to activities occurring
7 at the MediWaste facility. Appellant does not contend that NDEP must regulate an out-of-state
8 generator, transfer facility or transporter. The issue is whether NDEP had sufficient information
9 concerning the age and condition of incoming waste to determine that allowing that waste to remain
10 at the Pahrump facility for up to an additional 15 days satisfies the requirements applicable to the
11 facility NDEP permitted.

12 The distinction is significant. A 15-day onsite limitation establishes the maximum time after receipt at
13 MediWaste. It does not establish the age or condition of the material when that separate period
14 begins.

15 Federal and international technical guidance demonstrates why that distinction matters.

16 EPA's Model Guidelines for State Medical Waste Management address storage before treatment and
17 expressly recognize that medical waste may be stored at the generator, at intermediate storage
18 facilities, during transfer, and while being transported to an offsite treatment facility. EPA's guidance
19 states that medical waste storage should maintain the waste in a nonputrescent, odorless state; that
20 storage temperature should control odors and prevent conditions leading to putrefaction; that storage
21 time should be minimized; and, significantly, that time in transit is considered time in storage.

1 EPA's guidance therefore recognizes the physical reality underlying this Ground: transporting medical
2 waste does not reset its biological age or eliminate its prior storage history. Time continues to pass
3 while the waste is stored, transferred and transported.

4 EPA's Model Guidelines are guidance and are not asserted by Appellant as binding Nevada law or as
5 establishing a Nevada maximum storage period. They provide technical and regulatory context
6 demonstrating that prior storage and transportation time are relevant considerations in evaluating the
7 condition of medical waste when it reaches a treatment facility.

8 EPA's earlier medical waste regulatory materials similarly required regulated medical waste subject to
9 that federal program to be maintained in a nonputrescent state and recognized that refrigeration may
10 be necessary depending upon the type of waste and the length of storage. Those historical federal
11 requirements are not asserted as presently controlling Nevada law. They further demonstrate that the
12 relationship among waste type, elapsed storage time, temperature and putrefaction has long been
13 recognized in medical waste management.

14 WHO guidance reinforces the same technical concern for pathological waste. WHO identifies
15 pathological waste as human tissues, organs, body parts and related biological material. WHO
16 health-care-waste training guidance describes pathological waste as biologically active, states that
17 gas formation and pathogen growth should be expected during storage, and recommends air-
18 conditioned or refrigerated storage.

19 Again, Appellant does not contend that WHO guidance establishes Nevada law or that WHO's
20 recommended storage temperature is a legally controlling requirement for MediWaste. The relevance
21 is technical. Pathological material does not become biologically new when it crosses a state line or
22 enters MediWaste's property. Its prior age, preservation, temperature and storage history can affect
23 the condition in which it arrives and the condition in which it will remain during any additional storage.

1 That point is particularly important when Ground Ten is considered together with Ground Nine.
2 Ground Nine addresses whether pathological waste authorized by SW1900REV00 can remain
3 nonputrescible during as much as 15 days of onsite storage without an identified refrigeration
4 requirement, maximum storage temperature or continuous temperature monitoring requirement.
5 Ground Ten addresses the condition and age of that same material when MediWaste's separate 15-
6 day clock begins.
7 CDC and NIOSH technical guidance further demonstrates why the condition of biological material can
8 matter when it is subsequently handled. NIOSH defines workplace aerosols as particles or droplets
9 suspended in air and recognizes that workplace aerosols can be inhaled, contact the eyes or skin, or
10 otherwise expose workers depending upon their composition, size and concentration. NIOSH has
11 specifically developed methods for evaluating bioaerosols and microbial exposures in occupational
12 environments.
13 Appellant does not contend that transportation time itself creates an airborne disease, that aging
14 pathological waste necessarily contains an infectious organism, or that every handling event
15 generates an infectious aerosol. The narrower point is that prior age, storage, temperature and
16 biological condition are relevant to the condition of the material that workers will subsequently
17 receive, store, handle and process.
18 WHO likewise recognizes that health-care waste can contain harmful microorganisms and that unsafe
19 handling, storage, transport, treatment and disposal can create health risks. These public-health
20 authorities therefore provide technical support for determining the actual history and condition of
21 incoming biological waste rather than treating the date of arrival in Pahrump as if it were the
22 beginning of that material's existence.
23 The critical unanswered question remains:

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

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

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

8 The administrative record should therefore establish what information NDEP required concerning
9 incoming waste, what information MediWaste must receive or maintain, and how NDEP considered
10 that information in determining that up to an additional 15 days of onsite storage was appropriate.

11 Where the permissible storage period or biological condition of the waste depends upon temperature,
12 the relevant temperature history likewise cannot be evaluated unless that information is known or
13 documented.

14 This does not require NDEP to regulate conduct occurring in another state. It requires NDEP to
15 establish the factual and technical basis upon which it evaluated the medical and pathological waste
16 entering and subsequently being stored at the Nevada facility it permitted.

17 TEST QUESTIONS FOR THE COMMISSION'S USE

18 The following questions are presented for the Commission's determination from the written
19 administrative record and are intended to permit determination without oral supplementation by
20 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
21 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
22 record does not establish the stated proposition by sufficient evidence and the identified issue
23 therefore remains unresolved. A FALSE finding should be considered by the Commission in

1 determining whether the challenged NDEP decision can be sustained and whether the Commission
2 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

3 1. TRUE or FALSE: The administrative record establishes the maximum elapsed time that may occur
4 between generation and treatment for each medical and pathological waste category authorized for
5 receipt under Permit SW1900REV00, including prior storage, collection, transfer, staging, interstate
6 transportation, Pahrump receipt and Pahrump storage.

7 2. TRUE or FALSE: The administrative record establishes how NDEP considered storage occurring
8 before waste arrives at the Pahrump facility when determining that the same waste may remain
9 onsite for up to an additional 15 days after receipt before processing.

10 3. TRUE or FALSE: Permit SW1900REV00 or the incorporated application requires sufficient
11 generator, transfer-facility and transporter records to accompany incoming medical and pathological
12 waste so that its generation date, prior storage duration and actual age when received at the
13 Pahrump facility can be determined.

14 4. TRUE or FALSE: The administrative record establishes how NDEP considered lawful storage
15 occurring in California before interstate transportation when determining the acceptable additional
16 storage period after that waste is received at the Pahrump facility.

17 5. TRUE or FALSE: Where the permissible duration or biological condition of incoming medical or
18 pathological waste depends upon its prior storage temperature, Permit SW1900REV00 or the
19 incorporated application requires sufficient records to establish the relevant temperature history
20 before receipt at the Pahrump facility.

21 6. TRUE or FALSE: Permit SW1900REV00 or the incorporated application establishes what action
22 MediWaste must take when the generation date, prior storage duration or relevant temperature
23 history of incoming medical or pathological waste cannot be established.

1 7. TRUE or FALSE: For pathological waste, Permit SW1900REV00 or the incorporated application
2 requires a traceable record sufficient to establish the relevant generation, pickup, transfer, Pahrump
3 receipt and treatment dates so that the actual age of the material at treatment can be determined.

4 GROUND ELEVEN

5 THE FINAL REGULATORY CLASSIFICATION AND DISPOSAL PATHWAY FOR MEDIWASTE'S
6 OUTGOING RESIDUE WERE NOT ESTABLISHED BEFORE PERMIT ISSUANCE

7 SW1900REV00 authorizes MediWaste to process medical waste through its proposed pyrolysis
8 system

9 and thereby generate a residual material described in the permitting record as outgoing residue, ash,
10 or

11 hydrated ash. Disposal of that material is a necessary and recurring consequence of the operation
12 authorized by the permit.

13 Nevada law expressly includes "ashes or incinerator residue" within the definition of solid waste. NRS
14 444.490(1). Hazardous waste managed pursuant to NRS 459.400 through 459.600 is excluded from
15 that definition. NRS 444.490(2)(a). The regulatory classification and characterization of MediWaste's
16 outgoing residue therefore matter because they determine the requirements applicable to its handling
17 and disposal.

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

1 SW1900REV00 itself recognizes that the outgoing residue requires an authorized disposal pathway.
2 The permit defines "Outgoing Residue" as material remaining in the pyrolysis unit after treatment is
3 complete and requires that it be disposed of at an appropriately permitted disposal facility. The permit
4 further provides that if the disposal facility is located within Nevada, NDEP-BSMM must approve
5 disposal of the ash at that facility.

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

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

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

23 The unresolved disposition of a waste stream necessarily generated by operation is therefore a

1 substantive permitting issue. The permit authorizes the process that creates the residue while leaving
2 material determinations governing the lawful management and disposition of that residue to future
3 submissions and NDEP approval.

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

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

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

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

17 The record raises a fundamental question as to how NDEP could make that determination while
18 substantive elements governing the hydrated ash remained unresolved. Without completed
19 characterization requirements and results, the final regulatory classification and lawful disposal
20 pathway had not been established. Without an identified and authorized disposal pathway, the record
21 does not establish how NDEP evaluated the public health and environmental consequences
22 associated
23 with the actual final disposition of the residue. Without completed compliance and response

1 requirements, the permit does not establish what operational response is required if ash testing
2 produces an unacceptable result, whether additional residue may continue to be generated, how that
3 residue may be stored or accumulated, or what must occur before affected operations or disposal
4 may
5 resume.

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

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

18 The Pahrump Landfill illustrates the significance of the unresolved classification and disposal
19 pathway.

20 Pahrump Landfill Permit SW97REV05 identifies specific categories of solid waste permitted for
21 disposal: Municipal Solid Waste, Waste Tires, Medical Waste, Animal Carcasses, Sewage Sludge and
22 Solidified Septage, and Food Industry Waste. The remaining numbered category is "Reserved." The
23 permit does not expressly identify pyrolysis ash, hydrated ash, char, biochar, or MediWaste outgoing

1 residue as an authorized waste type.

2 That does not establish that MediWaste's outgoing residue could never be disposed of at the

3 Pahrump

4 Landfill. After characterization and regulatory review, NDEP could determine that the residue falls

5 within a waste classification already authorized by the landfill's permit and approved operational plan.

6 The present record, however, does not establish that determination.

7 Nye County's public landfill information reinforces that distinction. The County states that its public

8 prohibited waste information is not a complete list and that acceptance depends upon each landfill's

9 operating permit, applicable regulations, waste characterization, and operational limitations. The

10 County's public table does not specifically list ash or biochar as prohibited at the Pahrump Landfill.

11 That omission does not establish that MediWaste's residue is authorized for disposal there. The

12 applicable regulatory classification, characterization results, landfill permit, and approved operational

13 plan must establish whether the facility is authorized to receive it.

14 The permitting record further states: "No beneficial reuse of the ash has been proposed." Beneficial

15 reuse therefore was not the final disposition pathway evaluated as part of the permitting decision. If

16 beneficial reuse is later proposed, that proposed disposition would require whatever characterization,

17 regulatory determination, approval, and public process are applicable to that use.

18 The unresolved ash requirements also present a fundamental enforceability problem. NRS

19 444.553(2)

20 requires the operator of a permitted solid waste management facility to comply with the terms and

21 conditions of its permit. That statutory obligation cannot supply a substantive permit condition that

22 NDEP did not establish. If NDEP leaves a substantive operating requirement to future determination,

1 defers it to a future plan or approval, or does not address it at all, NRS 444.553(2) cannot transform
2 that
3 unwritten requirement into an existing term or condition of SW1900REV00.

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

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

18 Nevada's enforcement provisions reinforce that distinction. An enforcement order must "[s]pecify the
19 term or condition of a permit issued pursuant to NRS 444.505, 444.553 or 444.556, or the statute or
20 regulation, which is alleged to have been violated or which is about to be violated, or the threat to
21 human health, public safety or the environment." NRS 444.594(1)(a). The order must also "[p]rescribe
22 any corrective action which must be taken and a reasonable time within which it must be taken." NRS
23 444.594(1)(c).

1 NDEP retains separate authority under NRS 444.592 when solid waste presents or may present a
2 threat
3 to human health, public safety, or the environment. That reactive authority does not complete
4 SW1900REV00 or establish in advance substantive operating requirements omitted or deferred from
5 the final permit. The question is not whether NDEP may react after a threat develops. The question is
6 whether NDEP could issue a final permit before establishing the enforceable requirements intended
7 to
8 determine compliance and govern the response to an unacceptable result in the first instance.
9 The problem is therefore circular. SW1900REV00 authorizes an operation that necessarily generates
10 hydrated ash. The permit requires characterization to determine how that ash may lawfully be
11 managed
12 and disposed. Material requirements governing that characterization and disposition remain subject to
13 future determination. NRS 444.553(2) then requires MediWaste to comply with the terms and
14 conditions of its permit, but that statute cannot enforce as a permit condition a substantive
15 requirement
16 that NDEP has not yet established as a term or condition of the permit.
17 The same deferral directly affects the permitting process, including public comment and
18 administrative
19 appeal. Nevada's solid waste permitting process provides for public notice and a 30 day public
20 comment period concerning NDEP's proposed permitting decision. NAC 444.641(3). Interested
21 persons may submit comments and request a public hearing. NAC 444.6415. NDEP itself describes
22 its
23 permitting process as providing public comment following technical review and expressly states that a

1 person wishing to appeal its permitting decision may appeal to the State Environmental Commission.
2 Those rights have practical meaning only if the substantive determinations exist when the public is
3 afforded the opportunity to review and challenge them. Here, the public was asked to comment upon
4 the proposed MediWaste permit before the final regulatory classification, enforceable requirements,
5 and authorized disposal pathway for the outgoing residue had been established.
6 The public therefore could not meaningfully comment upon the suitability, authorization, location,
7 capacity, operating conditions, public health consequences, environmental consequences, or
8 regulatory
9 requirements associated with the actual disposal facility that would ultimately receive MediWaste's
10 outgoing residue because that determination had not yet been made.
11 The same problem applies to administrative appeal. Appellant is presently challenging NDEP's final
12 decision issuing SW1900REV00. Had the regulatory classification, enforceable ash requirements,
13 required response to unacceptable results, and authorized disposal pathway been resolved as part of
14 that
15 final permitting decision, those determinations would have been part of the permitting record available
16 for public comment and administrative review.
17 A substantive requirement established only after permit issuance was not available for public review
18 and comment before NDEP's final decision and was not part of the final permitting record available for
19 administrative appeal. Once the public comment period expired and NDEP issued SW1900REV00,
20 the
21 opportunity to comment upon the permit as proposed had passed. Once the period for administrative
22 appeal of that final decision expires, the opportunity to challenge that final permitting decision likewise
23 passes.

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

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

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

20 The issue becomes additionally significant if the future disposal determination requires modification of
21 a receiving landfill's permit. NAC 444.6435 provides that a permit modification may be subject to
22 public notice and 30 days of public review when the modification includes an increase in the amount
23 or

1 type of solid waste managed at the site that is inconsistent with the permitted design, operational
2 plans,
3 or municipal solid waste plans; a change in the manner of waste management inconsistent with those
4 plans; a substantive change in specified permit requirements; or another change the solid waste
5 management authority determines requires public notice and a public hearing. NAC 444.6435(1)
6 through (4).

7 The question is therefore not simply where MediWaste will eventually take the hydrated ash. The
8 more
9 fundamental question is whether NDEP could issue a final permit authorizing an operation that
10 necessarily generates that residue before establishing the characterization requirements, regulatory
11 classification, enforceable compliance standards, required response to an unacceptable result, and
12 lawful final disposition pathway necessary to manage it, while allowing the permitting process,
13 including public comment and administrative appeal, to proceed without those substantive
14 requirements having been established.

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

16 **TEST QUESTIONS FOR THE COMMISSION'S USE**

17 The following questions are presented for the Commission's determination from the written
18 administrative record and are intended to permit determination without oral supplementation by
19 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
20 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
21 record does not establish the stated proposition by sufficient evidence and the identified issue
22 therefore remains unresolved. A FALSE finding should be considered by the Commission in

1 determining whether the challenged NDEP decision can be sustained and whether the Commission
2 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

3 1. **TRUE OR FALSE:** Before issuance of Permit SW1900REV00, the administrative record
4 established the regulatory classification applicable to the outgoing residue, ash or hydrated ash
5 necessarily generated by the permitted operation.

6 2. **TRUE OR FALSE:** Before issuance of Permit SW1900REV00, the administrative record
7 established the characterization requirements necessary to determine whether that outgoing residue
8 may be managed as nonhazardous solid waste or must be managed under another regulatory
9 classification.

10 3. **TRUE OR FALSE:** The administrative record identifies an approved disposal facility authorized to
11 receive the outgoing residue or hydrated ash generated by MediWaste after the required
12 characterization.

13 4. **TRUE OR FALSE:** The April 2, 2026 application establishes that MediWaste had an agreement
14 with a disposal facility to accept the outgoing residue generated by the permitted operation.

15 5. **TRUE OR FALSE:** The administrative record establishes that the Pahrump landfill is authorized to
16 receive MediWaste's outgoing ash or hydrated ash under its existing operational plan and approvals.

17 6. **TRUE OR FALSE:** Before permit issuance, NDEP established the enforceable handling and
18 disposal requirements that apply when ash characterization produces an unacceptable or hazardous
19 result.

20 7. **TRUE OR FALSE:** The administrative record establishes that the public had a meaningful
21 opportunity to review and comment upon the final regulatory classification, characterization
22 requirements and disposal pathway for the outgoing residue before Permit SW1900REV00 became
23 final.

1 8. **TRUE OR FALSE:** The administrative record establishes what additional state or local approval
2 and public process would be required before MediWaste's outgoing residue could be disposed of at a
3 facility not evaluated during the permitting process or beneficially reused in the future.

4 9. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, the administrative record established a
5 lawful, complete and enforceable final disposition pathway for the residue necessarily produced by
6 the permitted operation.

7 GROUND TWELVE

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

12 The MediWaste project presented earlier in the permitting record was described as a resource
13 recovery

14 process intended to convert medical waste into useful products. Earlier application materials
15 described

16 outputs including dimethyl ether (DME), methanol, carbon dioxide, process water, and a
17 carbonaceous

18 solid material described as biochar or char.

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

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

8 Nevada regulates the entire solid waste management system. A "solid waste management system"
9 means "the entire process of storage, collection, transportation, processing and disposal of solid
10 waste."
11 NAC 444.626.

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

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

17 Medical waste is separately addressed by Nevada's disposal regulations. "Sewage sludges, septic
18 tank
19 pumpings and medical wastes may be deposited at a disposal site only if provisions for such disposal
20 are included in the operational plan and approved by the solid waste management authority." NAC
21 444.646(1).

22 NDEP's own guidance concerning medical waste is even more direct. In NDEP's "Treatment
23 Collection

1 and Disposal of Infectious Medical Waste" Fact Sheet, under "Regulatory Framework," NDEP states:
2 "Nevada regulations do not require treatment of medical waste. Disposal in a permitted landfill
3 according to approved practices is acceptable." NDEP further explains that until medical waste has
4 been either treated or disposed, it must be stored and collected pursuant to NAC 444.662.
5 That distinction matters because the regulatory status and disposal pathway of the incoming medical
6 waste differ from those of the outgoing residue addressed in Ground Eleven. Before processing, the
7 material remains medical waste subject to Nevada's requirements governing storage, collection,
8 transportation, handling and disposal. Nevada does not require treatment of medical waste before
9 disposal in an appropriately permitted landfill according to approved practices. After MediWaste
10 processes the incoming waste through pyrolysis, however, the resulting material becomes outgoing
11 residue or hydrated ash that SW1900REV00 requires to be characterized and disposed of at an
12 appropriately permitted disposal facility.
13 SW1900REV00 authorizes MediWaste to receive and process specified categories of medical and
14 special waste from generators and transporters located anywhere in North America. The permitted
15 incoming waste stream includes Sharps, Regulated Medical Waste, Trace Chemotherapy
16 Contaminated
17 Waste, Pathological Waste, Non-RCRA Pharmaceuticals, and California only Solidified Canisters,
18 subject to the specific acceptance criteria and prohibitions established by the permit.
19 The landfill's NDEP Permit SW97REV05 expressly identifies "Medical Waste" as an authorized waste
20 category, while it does not expressly identify MediWaste's pyrolysis ash, hydrated ash, char, biochar,
21 or
22 outgoing residue as an authorized waste category. The unusual result is that the regulatory pathway
23 for

1 qualifying incoming medical waste may be more readily identifiable, and potentially more desirable
2 from a disposal standpoint, than the pathway for the residue created by processing that same waste.
3 This distinction is particularly significant because the incoming waste stream authorized by
4 SW1900REV00 has already been limited by the permit. RCRA hazardous waste, RCRA hazardous
5 pharmaceutical waste, DEA controlled drugs, radioactive waste above the specified screening level,
6 bulk chemotherapy waste, and other identified prohibited materials may not be accepted by
7 MediWaste.

8 The remaining permitted incoming medical waste categories substantially overlap the medical waste
9 for which Nevada allows disposal at an appropriately permitted landfill.

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

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

1 SW1900REV00 authorizes MediWaste to receive medical waste, store that waste at the Basin
2 Avenue
3 facility, and process it through the permitted system. The permit does not, however, appear to
4 establish
5 that all incoming material must always be processed through the MediWaste system before it can
6 leave
7 the facility, nor does the record identified by Appellant establish what would occur if MediWaste
8 received medical waste but processing became unavailable, economically impracticable, interrupted
9 for
10 an extended period, or otherwise was not performed.

11 The issue implicates the capacity and purpose of the local disposal system. MediWaste is a private
12 processing facility authorized to receive medical waste originating outside Nye County and potentially
13 throughout North America. The Pahrump Landfill is a locally operated disposal facility with finite
14 permitted capacity. If imported medical waste received by MediWaste could instead be redirected to
15 that landfill, the practical effect could be to transfer a disposal burden from the private processing
16 operation to the landfill, local government, and ultimately Nye County taxpayers.

17 That burden is greater than the volume of the medical waste alone. Nevada imposes a specific
18 disposal
19 requirement for special waste burial areas receiving medical waste. "A completed special waste burial
20 area must be covered with a layer of suitable cover material compacted to a minimum uniform depth
21 of
22 36 inches." NAC 444.646(2). Direct disposal of imported medical waste therefore consumes landfill
23 capacity not only through the volume occupied by the medical waste itself, but also through the

1 required three-foot layer of compacted suitable cover material over the completed special waste
2 burial
3 area. The potential diversion of substantial quantities of imported medical waste to the local landfill
4 could consequently consume valuable permitted landfill capacity and shorten the useful operating life
5 of a public disposal facility.

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

11 The same concern applies if MediWaste's operating model changes in the future. Nevada law
12 prohibits
13 operation of a solid waste management facility except pursuant to a permit issued by the solid waste
14 management authority and requires compliance with the terms and conditions of that permit. NRS
15 444.553(2). The effectiveness of that protection depends upon what SW1900REV00 actually requires
16 and prohibits.

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

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

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

12 This concern is reinforced by NDEP's own April 3, 2025 regulatory determination. NDEP expressly
13 warned MediWaste: "If there are changes to the process described, an additional applicability
14 determination will be required." NDEP therefore demonstrated its own understanding that a material
15 change in the process could require renewed regulatory review. Nevada law separately requires the
16 State Department of Conservation and Natural Resources to "advise, consult and cooperate" with
17 municipalities in the formulation of plans for and establishment of solid waste management systems.
18 NRS 444.570(1)(a). Nevada law further recognizes the regulatory significance of changes to those
19 systems by requiring municipal solid waste management plans to "be revised to reflect proposed
20 changes in the solid waste management system." NRS 444.510(5).

21 Against that statutory framework, the issue is not merely whether NDEP informed Nye County that
22 MediWaste's process had changed. The more consequential question is when the transformation
23 became sufficiently substantial that NDEP should have advised, consulted, and cooperated with Nye

1 County so that the County could determine whether the changed facility remained within the CUP it
2 had approved or required further local review. If further CUP review was required, failure to bring the
3 changed project back before the County could also have deprived the public of whatever notice,
4 comment, hearing, and right to challenge or appeal would have accompanied that local review. NDEP
5 should not be able to permit a substantially transformed state regulated operation without addressing
6 whether that transformation altered the project previously reviewed and approved at the local level
7 and,
8 as a consequence, bypassed public rights that would otherwise attach to further local review.
9 Accordingly, the record raises the following questions for Commission review:
10 NDEP's Response sharpens the issue by stating that "The Appellant is correct that the final permitted
11 operation differs from the initial proposed project." NDEP also states that it "does not have a duty to
12 consult with Nye County regarding the change in operations at the MediWaste facility" and that it is
13 not required to identify a disposal site for generated ash "or unprocessed medical waste."
14 The phrase "or unprocessed medical waste" is significant. It confirms that the regulatory record itself
15 contemplates unprocessed medical waste as a distinct disposal issue. Ground Twelve does not
16 allege that MediWaste presently intends to bypass the permitted process. It asks what enforceable
17 provision prevents medical waste brought to Pahrump from all over North America from being
18 directed to disposal rather than processed if the permitted process is unavailable, interrupted or not
19 used, and what state, local and public review would precede such a change.
20 NRS 444.570(1)(a) directs the State Department to advise, consult and cooperate with municipalities
21 in the formulation of plans for and establishment of solid waste management systems. Appellant does
22 not contend that this requires County approval of every NDEP permit change. The question is

whether the substantial transformation of the project and any resulting local waste-system consequences required consultation or evaluation before NDEP issued the final permit.

TEST QUESTIONS FOR THE COMMISSION'S USE

The following questions are presented for the Commission's determination from the written administrative record and are intended to permit determination without oral supplementation by Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative record establishes the stated proposition by sufficient evidence. FALSE means the administrative record does not establish the stated proposition by sufficient evidence and the identified issue therefore remains unresolved. A FALSE finding should be considered by the Commission in determining whether the challenged NDEP decision can be sustained and whether the Commission should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

1. **TRUE OR FALSE:** NDEP acknowledges that the final permitted operation differs from the initial proposed project.

2. **TRUE OR FALSE:** The administrative record establishes when the earlier resource recovery configuration involving DME, methanol, renewable fuel production and biochar was replaced by the final hydrated ash disposal configuration.

3. **TRUE OR FALSE:** The administrative record establishes that the public and Nye County were provided meaningful notice of the substantial transformation of the project before NDEP issued Permit SW1900REV00.

4. **TRUE OR FALSE:** Permit SW1900REV00 or the incorporated application requires all medical waste received by MediWaste to be processed through the permitted pyrolysis system rather than directed to disposal as unprocessed medical waste.

- 1 5. **TRUE OR FALSE:** The administrative record identifies the enforceable provision that prevents
2 medical waste brought to Pahrump from all over North America from being directed to a disposal
3 facility without first being processed through MediWaste's permitted system.
- 4 6. **TRUE OR FALSE:** The administrative record establishes the state and local approvals required
5 before incoming unprocessed medical waste could be directed to a disposal facility if the permitted
6 processing operation is unavailable, interrupted or not used.
- 7 7. **TRUE OR FALSE:** The administrative record establishes that the Pahrump landfill's existing
8 operational plan authorizes receipt of the categories and quantities of unprocessed medical waste
9 MediWaste is permitted to receive.
- 10 8. **TRUE OR FALSE:** Before issuing Permit SW1900REV00, NDEP evaluated the reasonably
11 foreseeable local disposal, transportation, storage, public health and governmental consequences if
12 incoming medical waste is not processed through the permitted system.
- 13 9. **TRUE OR FALSE:** The administrative record establishes the factual and legal basis for NDEP's
14 statement that it had no duty to consult with Nye County concerning the change in MediWaste's
15 operations, including consideration of NRS 444.570(1)(a).
- 16 10. **TRUE OR FALSE:** The administrative record establishes whether Nye County determined that
17 the substantially changed facility remained within Conditional Use Permit CU-24-3 or required further
18 local review.
- 19 11. **TRUE OR FALSE:** Before NDEP issued Permit SW1900REV00, the administrative record
20 established enforceable restrictions governing direct disposal of incoming unprocessed medical
21 waste and the additional state, local and public process required before the waste management
22 model presented to the public could materially change.

GROUND THIRTEEN

**CERTAIN MONITORED OPERATING LIMITS AND TESTING REQUIREMENTS REQUIRE
CLARIFICATION OF THEIR CORRESPONDING CORRECTIVE ACTION AND SHUTDOWN
REQUIREMENTS**

Ground Thirteen is narrow. Appellant does not contend that the permits contain no operating safeguards. They do. The issue raised in the Opening Brief is whether the administrative record establishes objective and enforceable operating consequences when certain monitored limits or testing requirements are not satisfied.

The Opening Brief identified three principal issues: failure to maintain the minimum thermal oxidizer temperature required by Air Pollution Control Permit AP4953-4771 during an active batch; failure of required stack performance testing, including EPA Method 23 testing for dioxins and furans; and an ash result exceeding the PCDD/F compliance limit established by NDEP Solid Waste Management Facility Permit SW1900REV00 for the MediWaste Medical Waste Pyrolysis Facility.

NDEP's Response does not resolve those questions.

NDEP expressly states that "any allegations involving the Air Pollution Control Permit issued by NDEP to the MediWaste Facility will not be addressed as that permit is separate and distinct from the Permit at issue in this appeal."

That position explains why NDEP did not address portions of Ground Thirteen, but it does not answer the factual questions presented by the administrative record. Ground Thirteen does not ask the Commission to reopen or independently adjudicate Air Pollution Control Permit AP4953-4771. The air permit is relevant because NDEP Solid Waste Management Facility Permit SW1900REV00 authorizes operation of the medical waste pyrolysis facility whose operation necessarily depends upon the same pyrolysis units and associated air pollution control equipment.

1 Air Pollution Control Permit AP4953-4771 establishes specific automatic operating responses for
2 certain conditions. As acknowledged in the Opening Brief, the air permit provides for automatic burner
3 shutdown associated with specified pyrolysis chamber backpressure and provides a limiting switch
4 addressing loss of power and thermal oxidizer controls. The existence of those provisions
5 demonstrates that objective operating consequences can be established when NDEP determines that
6 a monitored condition requires them.

7 The unresolved question concerns other expressly monitored or tested conditions.

8 First, Air Pollution Control Permit AP4953-4771 establishes a minimum thermal oxidizer operating
9 temperature of 1,450 degrees Fahrenheit and continuously monitors that temperature. The Opening
10 Brief asked what mandatory response follows if the thermal oxidizer falls below the required
11 temperature during an active batch, including whether waste feed must cease or the affected unit
12 must shut down. NDEP's Response does not identify that operating consequence because NDEP
13 declined to address matters involving the air permit.

14 Second, Air Pollution Control Permit AP4953-4771 requires periodic performance testing, including
15 EPA Method 23 testing for dioxins and furans. The permitting materials establish initial and recurring
16 performance testing and provide for annual testing that rotates among four of the seven pyrolysis
17 units. Those requirements establish when and how compliance is tested. They do not, by themselves,
18 establish what mandatory operational consequence follows when a tested unit fails an applicable
19 emissions limit.

20 Testing and corrective operating requirements are different things. A test determines whether a unit
21 complied under the tested conditions. Ground Thirteen asks what happens when the test
22 demonstrates that it did not.

1 Neither NDEP's Response nor the MediWaste materials reviewed by Appellant identify an objective
2 requirement establishing whether the affected pyrolysis unit must cease operation following a failed
3 emissions test, what corrective action must occur, whether retesting is required, and what objective
4 standard must be satisfied before the affected unit may resume operation.

5 Third, Permit SW1900REV00 establishes separate requirements for hydrated ash. The permit
6 establishes a PCDD/F compliance limit of 20 ng TEQ/kg dry weight using EPA Method 8290A. It also
7 requires an Ash Sampling Frequency Plan and an Ash Characterization Plan to be submitted and
8 approved before operations begin.

9 Those requirements answer part of Ground Thirteen. The record establishes how the ash is to be
10 characterized and provides requirements governing its subsequent handling and disposal. The record
11 further provides that material exhibiting a hazardous characteristic must be managed as hazardous
12 waste.

13 But disposition of a noncompliant waste product is not the same question as correction of the process
14 that produced that result.

15 The remaining issue is whether an ash result exceeding the established 20 ng TEQ/kg PCDD/F
16 compliance limit requires investigation of the affected pyrolysis unit or process, corrective action,
17 suspension of further processing by the affected unit, retesting, or satisfaction of an objective
18 standard before processing resumes. The responses reviewed by Appellant do not identify such an
19 enforceable operational consequence.

20 That distinction is important because the purpose of monitoring and testing is not merely to generate
21 information after processing occurs. Where NDEP establishes an operating limit or compliance
22 threshold, the administrative record should make clear what enforceable consequence follows when
23 that limit or threshold is exceeded.

1 Appellant does not ask the Commission to design new technical operating requirements. Nor does
2 Appellant contend that every deviation necessarily requires permanent shutdown of a unit. The
3 narrower question is whether NDEP established the required operating consequence before
4 authorizing operation or whether the consequence of a failed monitored limit or compliance test
5 remains dependent upon future discretionary action.

6 Ground Thirteen therefore remains narrower than the preceding Grounds. As stated in the Opening
7 Brief, Appellant does not contend that Ground Thirteen, standing alone, necessarily requires reversal,
8 suspension, or remand of Permit SW1900REV00. Appellant asks the Commission to determine from
9 the administrative record whether the corrective action, feed cessation, shutdown, retesting, and
10 resumption requirements corresponding to these monitored limits and testing requirements are
11 objective and enforceable, or whether those consequences remain unresolved.

12 **TEST QUESTIONS FOR THE COMMISSION'S USE**

13 The following questions are presented for the Commission's determination from the written
14 administrative record and are intended to permit determination without oral supplementation by
15 Appellant. Each question requires a TRUE or FALSE determination. TRUE means the administrative
16 record establishes the stated proposition by sufficient evidence. FALSE means the administrative
17 record does not establish the stated proposition by sufficient evidence and the identified issue
18 therefore remains unresolved. A FALSE finding should be considered by the Commission in
19 determining whether the challenged NDEP decision can be sustained and whether the Commission
20 should reverse, modify, or remand the decision, or grant other appropriate relief within its authority.

21 **1. TRUE OR FALSE:** The administrative record identifies the mandatory operating response required
22 if the thermal oxidizer associated with a MediWaste pyrolysis unit falls below the minimum 1,450
23 degrees Fahrenheit operating temperature during an active processing batch.

1 2. **TRUE OR FALSE:** The administrative record establishes whether waste processing must cease or
2 the affected pyrolysis unit must shut down if its thermal oxidizer falls below the required minimum
3 operating temperature during an active batch.

4 3. **TRUE OR FALSE:** The administrative record identifies the mandatory operating consequence that
5 follows if required performance testing demonstrates that a MediWaste pyrolysis unit exceeds an
6 applicable emissions limit.

7 4. **TRUE OR FALSE:** The administrative record establishes whether a pyrolysis unit that fails required
8 EPA Method 23 dioxin and furan emissions testing must cease operation pending corrective action
9 and successful retesting.

10 5. **TRUE OR FALSE:** The administrative record identifies the corrective action, investigation,
11 retesting, and objective compliance standard required before a pyrolysis unit that fails an applicable
12 emissions test may resume operation.

13 6. **TRUE OR FALSE:** Permit SW1900REV00 or another enforceable requirement identifies the
14 mandatory operational response when hydrated ash produced by a MediWaste pyrolysis unit exceeds
15 the established PCDD/F compliance limit of 20 ng TEQ/kg dry weight using EPA Method 8290A.

16 7. **TRUE OR FALSE:** The administrative record establishes whether an ash result exceeding the 20
17 ng TEQ/kg PCDD/F compliance limit requires investigation of the pyrolysis unit or process that
18 produced the ash and implementation of corrective action addressing the cause of the exceedance.

19 8. **TRUE OR FALSE:** The administrative record establishes whether the affected pyrolysis unit must
20 cease processing following an ash result exceeding the 20 ng TEQ/kg PCDD/F compliance limit and
21 what objective requirements must be satisfied before that unit may resume processing.

22 9. **TRUE OR FALSE:** Before NDEP issued Permit SW1900REV00, the administrative record
23 established objective and enforceable corrective action, feed cessation, shutdown, retesting, and

1 resumption requirements corresponding to the monitored operating limits and compliance testing
2 identified in Ground Thirteen.

3 **REQUEST FOR RELIEF**

4 For the reasons stated in the Opening Brief and this Reply Brief, Appellant respectfully requests that
5 the State Environmental Commission reverse NDEP's final decision issuing Solid Waste Management
6 Facility Permit SW1900REV00 where the Commission determines that the Permit was issued before
7 completion of a substantive evaluation, determination, or procedure required by Nevada law.

8 If the Commission determines that remand is appropriate as to any matter raised in this appeal,
9 Appellant respectfully requests that Permit SW1900REV00 be held in abeyance so that it cannot be
10 implemented or relied upon to advance activities authorized by that Permit while the matter requiring
11 remand remains unresolved and any public or local review required by Nevada law is completed.

12 Appellant further requests that the Commission modify the decision or impose such other appropriate
13 relief within its authority as the Commission determines is warranted by the administrative record and
14 its determinations upon the issues and test questions presented in this Reply Brief.

15 **CONCLUSION**

16 This appeal does not ask the Commission to determine whether MediWaste may ever operate a
17 medical waste treatment facility in Pahrump. It asks whether NDEP completed the evaluations,
18 determinations and procedures required by Nevada law before issuing Permit SW1900REV00 and
19 whether the administrative record establishes the factual and technical basis necessary to sustain
20 that decision.

21 NDEP's and MediWaste's responses have resolved or narrowed some issues. Appellant has
22 expressly withdrawn Ground Four as an independent basis for relief. Other issues remain for the
23 Commission's determination from the administrative record.

1 Appellant respectfully requests that the Commission make those determinations based upon the
2 written record and the TRUE or FALSE questions presented with each Ground. Where the record
3 does not establish a proposition necessary to sustain NDEP's permitting decision, Appellant requests
4 that the Commission grant the relief appropriate to that unresolved issue within its statutory authority.

5 Respectfully submitted,

6 A.J. Brown

7 Appellant, Pro Se

8 Dated: September 24, 2026

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on September 24, 2026, I transmitted by electronic mail a true and correct copy of

11 Appellant A.J. Brown's Reply Brief to:

12 Sheryl Fontaine

13 Chief, Bureau of Administrative Services

14 Nevada Division of Environmental Protection

15 Department of Conservation and Natural Resources

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19 The Reply Brief was transmitted to Ms. Fontaine in accordance with her instructions that it could be
20 submitted to her by email for distribution to the appropriate parties.

21 Dated: September 24, 2026

22 AJB

23 A.J. Brown

1 Appellant, Pro Se