

BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION

In Re:

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

**INTERVENOR MEDIWASTE DISPOSAL LLC'S RESPONSE BRIEF
(Pursuant to NAC 445B.8925(1))**

KAEMPFER CROWELL
Sihomara L. Graves, No. 13239
Amber N. Konakis, No. 16565
50 West Liberty Street, Suite 1100
Reno, Nevada 89501
Telephone: (775) 852-3900
Facsimile: (702) 327-2011
Email: sgraves@kcnvlaw.com
Email: akonakis@kcnvlaw.com

Attorneys for Attorneys for Intervenor MediWaste Disposal LLC

Pursuant to NAC 445B.8925.1, MediWaste Disposal LLC, a Nevada limited liability company (“MediWaste”), by and through its counsel, KAEMPFER CROWELL, LTD., hereby files this Response Brief (“Response”) to the Opening Briefs separately filed by Appellants A.J. BROWN and SHARON CRUISE (collectively, “Appellants”), challenging the Nevada Division of Environmental Protection’s (“NDEP’s”) decision to issue Solid Waste Management Facility Permit No. SW1900REV00 (the “Permit”) to MediWaste, for the operation of the medical-waste pyrolysis Vulcan Medical Waste Treatment Facility (“Vulcan Project” or “Project”) in Pahrump, Nevada. As substantial evidence exists to support NDEP’s decision, and because Appellants have not established a permissible ground for reversal, the State Environmental Commission (“Commission”) should affirm the Permit and deny the appeals, as further set forth below.

I. QUESTIONS PRESENTED.

Appellants have challenged the Permit by raising the following questions:

A. Whether NDEP reasonably determined that the permit application was complete when the Permit and fact sheet (“Fact Sheet”) define the facility, permitted waste streams, design capacity, processing system, storage controls, residue-management program, monitoring requirements, and conditions that must be satisfied before operations commence;

B. Whether enforceable pre-operational conditions concerning financial assurance, ash sampling, emergency planning, wind and dust controls, stormwater controls, engineering certifications, and local approvals demonstrate protective permitting rather than an unlawfully incomplete application;

C. Whether the public received the prescribed review opportunities when NDEP conducted a 30-day comment period, held a public hearing, accepted additional hearing comments, and issued the final Permit after that process;

D. Whether Appellants’ challenges to emergency-response capability and medical-response pathways establish reversible error when the facility cannot operate until MediWaste

provides emergency-action, fire-suppression, and 24-hour hazardous-material-response provisions to local responders and demonstrates coordination to NDEP;

E. Whether Appellants' fuel-supply and hypothetical equipment-substitution arguments establish a defect in the solid-waste Permit where the Permit authorizes the identified facility configuration, requires notice of operational changes, and preserves NDEP's modification, suspension, and revocation authority;

F. Whether Appellants have shown reversible error concerning the County conditional use permit or application version when the final Permit identifies the controlling application as version 6.0, submitted April 2, 2026, incorporates it by reference, and requires local agency approval before operations begin;

G. Whether the Permit contains substantial, objective safeguards addressing pathological waste, onsite storage, waste tracking, residue characterization, and disposal; and,

H. Whether Appellants' challenges concerning groundwater, ash disposal, direct disposal of incoming waste, and consequences of monitoring exceedances overcome the substantial evidence supporting NDEP's decision.

II. STATEMENT OF THE CASE.

MediWaste submitted its final Vulcan Medical Waste Treatment Facility Application on April 2, 2026 ("Application"). Following submission and acceptance of the Application, NDEP conducted public review before issuing the Permit, including a 30-day comment period, a public hearing, and the acceptance of additional hearing comments. The 30-day comment period ran from April 1 through May 1, 2026. NDEP also held an in-person public hearing on July 7, 2026, and accepted comments through the following business day. NDEP issued the Permit on August 31, 2026.

Appellant A.J. Brown challenges the Permit through thirteen stated grounds, principally arguing that NDEP treated the Application as complete while allegedly deferring substantive requirements; that the public lacked meaningful review; and that the Permit insufficiently addresses emergency response, fuel supply, local approval, application version control,

pathological waste, storage duration, residue disposal, and operating consequences following test failures. Sharon Cruise separately alleges that the facility threatens groundwater in Basin 162 and that the local fire department lacks capacity to respond to a hazardous-material spill.

III. STATEMENT OF FACTS.

A. The Permit Defines the Facility and Its Maximum Scale.

The Permit authorizes a medical-waste pyrolysis facility on a 4.70-acre parcel at 1850 East Basin Avenue in Pahrump (APN 035-191-52). The facility consists of two existing buildings, seven pyrolysis units, waste-staging areas, residue-handling systems, and associated improvements. The Permit establishes a maximum annual throughput of 15,120 tons, equivalent to an average permitted throughput of 41.4 tons per day. It limits indoor staging of incoming material to 250 tons and outdoor staging on the paved lot to 200 tons, for a maximum design staging capacity of 450 tons, or 900,000 pounds. The Fact Sheet independently describes approximately 84,000 pounds of daily processing and a maximum onsite inventory of 900,000 pounds, consisting of approximately 500,000 pounds inside the receiving and processing building and up to ten enclosed trailer loads of 40,000 pounds each.

B. The Facility Uses a Defined, Enclosed Treatment Process.

Medical waste is delivered in enclosed 53-foot tractor-trailers and remains in closed containers or double-packaged polypropylene bags. No open waste-management or stockpile area is authorized. Incoming material is handled by conveyors, forklifts, hand trucks, dollies, or manual handling within the controlled facility. The process uses three sequential treatment stages wherein waste is first heated in an enclosed primary pyrolytic chamber, where thermal decomposition converts constituent material into vapors. Stainless-steel piping then carries those vapors to a second stage for further treatment, after which controlled introduction of air oxidizes volatile compounds into carbon dioxide and water vapor. A final vent stage provides additional residence time for reaction of remaining vapors and particulates. This process uses no process water and generates no process wastewater. Existing stormwater controls direct runoff north across the

asphalt surface toward native ground and an onsite detention basin, and grading is intended to provide additional containment.

C. The Permit Strictly Limits Acceptable Waste.

The Permit authorizes only specified categories: sharps; regulated medical waste; trace chemotherapy-contaminated waste; pathological waste decanted of formaldehyde, formalin, or other preservatives; non-RCRA pharmaceuticals certified by the generator as nonhazardous; and specified California-origin solidified canisters. Any other material requires NDEP's prior written approval, without which the waste shall be rejected.

The Permit specifically prohibits untreated Category A infectious substances, putrescible waste, RCRA hazardous waste, hazardous pharmaceutical waste, state-listed hazardous waste, DEA-controlled drugs, radioactive waste exceeding 36 microroentgens per hour, formaldehyde and other listed chemicals, lead-containing material, complete human remains, bulk chemotherapy waste, compressed cylinders and aerosol cans, mercury-containing materials, and embryos. Nonconforming waste must be rejected and may not be stored onsite.

D. The Permit Imposes Tracking and Storage Controls.

Each incoming container of waste shall be scanned upon acceptance into MediWaste's inventory system, associated with its staging trailer, tracked while onsite, and scanned again before destruction. Waste shall be accepted on a scheduled basis, and unprocessed waste may remain onsite no longer than 15 days after receipt. The Permit makes MediWaste responsible for all waste received and prohibits storage of outgoing residue outside the property boundaries. The Permit also requires quarterly reporting of the quantity of incoming waste and tracks outgoing rejected waste, hydrated ash, biochar, and other outgoing material by receiving facility and tonnage.

E. Residue Is Subject to Quantitative Testing and Disposal Controls.

The projected volume of residue is between 1,680 and 33,600 pounds per day, 11,760 and 235,200 pounds per week, and 604,800 and 12,096,000 pounds per year. Those projections allowed NDEP to evaluate the potential range of residue generation rather than rely on an unspecified future quantity. The Permit defines outgoing residue as material remaining after

treatment and requires disposal at an appropriately permitted facility. If the receiving facility is in Nevada, NDEP must approve disposal there. The Fact Sheet further provides that each pyrolytic batch will have a retention sample and that an entire roll-off load will be managed according to the most conservative sample result; if a sample is hazardous, the entire load shall be managed as hazardous waste and subject to proper disposal and protocols.

Before offsite disposal, residue must undergo Toxicity Characteristic Leaching Procedure analysis and testing for dioxins and furans using EPA Method 8290A. The Permit establishes numerical thresholds for eight metals and a dioxin and furan compliance limit of 20 nanograms toxic equivalents per kilogram on a dry-weight basis. No ash may be transported offsite until at least one representative sample from each pyrolysis unit has been submitted to NDEP, and any load exhibiting a hazardous characteristic must be managed as hazardous waste. Ash must be held in a fully sealed 40-cubic-yard roll-off container. Additions must be logged by date, time, weight, and waste code, and the container and surrounding area must be visually inspected for releases. A full load is approximately 23 tons.

F. Operations Cannot Begin Until NDEP Approves Additional Protective Measures.

The Permit does not authorize immediate operation and requires that at least 30 days before operations commence, MediWaste must provide evidence concerning zoning, permanent closure of floor drains, dust and ignition-risk controls, sealed ash-container specifications, Nevada business registration, and emergency coordination. MediWaste also must submit wind-release controls, including wind-speed limits and containment procedures, at least 60 days before operations.

Further, MediWaste must provide emergency-action, fire-suppression, and 24-hour hazardous-material-response provisions to the local fire department and first responders, provide updates to those agencies, and demonstrate coordination to NDEP. Building 1 already has an automatic sprinkler system activated by fire or smoke detection, and fire extinguishers will be distributed throughout the facility. The Permit also requires submission of spill-prevention and

stormwater-pollution-prevention plans, letters of local agency approval, a professional-engineer-certified as-built report, and a professional-engineer-certified engineering-design-change report.

Finally, MediWaste must submit a third-party clean-closure cost estimate at least 60 days before operations and proof of an allowable, fully funded financial-assurance mechanism at least 30 days before operations. Operations may not begin until NDEP approves the estimate and the required assurance is in place. MediWaste likewise must submit ash-sampling and characterization plans for approval.

As expressly stated in the Permit, no operations may commence until MediWaste has satisfied all conditions.

IV. STANDARD OF REVIEW.

NAC 444.980 governs a request for Commission review of NDEP's final decision under Chapter 444. It requires a hearing request within ten (10) days after notice of NDEP's action and makes NAC 445B.875 through NAC 445B.899 applicable to the hearing. NAC 445B.875 supplies the definitions governing those incorporated hearing provisions, while NAC 445B.877 defines an "appellant" as a person requesting a Commission hearing under, among other authorities, Chapter 444 of NRS and places the burden of proof upon the Appellant in the context of a challenge to a decision issued by NDEP. NAC 445B.875; NAC 445B.877.

Under the incorporated review framework, Appellants must establish that the challenged decision violated constitutional or statutory provisions, exceeded agency authority, resulted from unlawful procedure or other legal error, was clearly erroneous in light of reliable, probative, and substantial evidence, or was arbitrary or capricious or characterized by abuse of discretion. Nevada authority recognizes those same grounds when reviewing administrative decisions. *Nevada Indus. Comm'n v. Reese*, 93 Nev. 115, 125 (1977).

While questions of law receive independent review, factual findings are disturbed only when unsupported by substantial evidence or affected by clear error or abuse of discretion and Agency conclusions closely related to the agency's view of the facts remain entitled to deference

when supported by substantial evidence. *City of Reno*, 127 Nev. at 119, 251 P.3d at 721 (quoting *Jones v. Rosner*, 102 Nev 215, 217, 719 P.2d 805, 806 (1986)).

“Substantial evidence” exists “if a reasonable person could find the evidence adequate to support the agency's conclusion.” *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008); *City of North Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011); *Gilman v. Clark Cnty. Sch. Dist.*, 139 Nev. 61, 65 (2023). Further, reviewing bodies do not reweigh evidence or make factual determinations in the first instance. *Id* at 65. An administrative decision supported by substantial evidence must be sustained, and neither a reviewing court nor the Commission should substitute its preferred evidentiary judgment for the agency’s reasonable factual determination. *Tighe v. Las Vegas Metro. Police Dep’t*, 110 Nev. 632, 635 (1994); *Apeceche v. White Pine County*, 96 Nev. 723, 725 (1980).

Here, SEC review must focus on the evidence submitted to NDEP. NAC 445B.8914 generally prevents the Commission from considering evidence not submitted to the Department before the challenged decision when NDEP allowed public comment, unless the Commission determines that reasonable cause excuses the omission. Appellants therefore cannot establish reversible error merely by posing unanswered questions, proposing additional studies, or offering post-decision theories untethered to the permitting record.

V. ARGUMENT.

The remaining grounds largely ask the Commission to require studies or operating restrictions that Appellants have not connected to a mandatory permitting criterion. They also overlook protections already in the Permit, including waste exclusions, sealed handling, a 15-day onsite limit, automatic fire suppression, emergency coordination, batch-level residue sampling, numerical characterization limits, hazardous-waste management, receiving-facility approval, financial assurance, and NDEP’s inspection and enforcement authority.¹ Under the substantial-evidence standard, disagreement with NDEP’s technical judgment is insufficient to support a successful challenge of the Permit.

¹ See Ex. 8.

A. NDEP Reasonably Determined the Application Was Complete and Supported Issuance of a Conditional Permit.

NAC 444.641 requires the solid-waste management authority to notify an applicant whether an application is complete or deficient within 45 days. Completeness turns on whether the application contains the documents and supporting information required by the applicable permitting regulation, and the authority may request additional materials it considers necessary. NAC 444.641. While Appellants propose additional considerations, they fail to identify a required category of facility information that NDEP lacked. The Application and ancillary documents identify the site, buildings, equipment, maximum throughput, staging capacity, accepted and prohibited wastes, handling system, treatment process, stormwater conditions, fire controls, tracking procedures, onsite-storage limit, projected residue quantities, residue containers, analytical methods, numerical thresholds, and disposal restrictions. Those facts supplied a concrete basis for NDEP's decision, not an undefined proposal.

Appellants principally rely on Permit Table 5's "[TBD]" sampling schedule and the Schedule of Compliance, claiming the schedule is insufficient. While Table 5 does leave stage-specific frequency and duration entries open, neither the Application nor the Permit leave ash regulation open. Constituents, analytical methods, regulatory thresholds, certified-laboratory requirement, reporting obligation, pre-disposal testing, hazardous-waste consequence, representative sampling from every unit, and NDEP approval for disposal at a Nevada facility are identified in detail.² The remaining frequency plan must be submitted at least 60 days before operations and approved before operations begin, which is reasonable as the frequency will be based on waste volume in a representative capacity and estimated frequencies will be better determined as the Project moves forward.³

The same is true of financial assurance. The Permit specifies the required subject—a third-party estimate for clean closure—the submission deadline, NDEP approval, proof of an allowable

² See *Ex. 1*; *Ex. 8*.

³ *Id.* at 11.

assurance mechanism, and an absolute prohibition against commencing operations before approval.⁴ Appellants' assertion that the Permit allows an unassured facility to operate is therefore incorrect. Similarly, the Schedule of Compliance does not create an issue regarding impermissible finality as it establishes enforceable prerequisites. The Permit may be modified for cause, suspended, or revoked for noncompliance, and planned changes do not stay any permit condition. MediWaste must also provide information requested by NDEP to determine compliance or whether modification, revocation, reissuance, or termination is warranted. NAC 444.6435. These provisions support NDEP's determination that it could issue the Permit while retaining approval authority over pre-operational implementation measures.

A reviewing body may not overturn an agency's factual judgment merely because another decisionmaker could request more information or assign different weight to the evidence. The controlling question is whether a reasonable person could find the record adequate to support NDEP's decision. *Gilman* at 65; *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424 (1993). The detailed facility design, fixed capacities, waste restrictions, monitoring thresholds, and conditions precedent readily satisfy that standard and show that substantial evidence existed to support NDEP decision.

B. Pre-Operational Permit Requirements Preserve Regulatory Oversight.

Appellants characterize every post-issuance submission as evidence that NDEP's evaluation was unfinished. That framing ignores the distinction between authorizing a defined facility and allowing that facility to commence operations. The Permit defines what MediWaste may construct and operate while withholding authority to process waste until NDEP approves specified safeguards. MediWaste may not begin operations without approved financial assurance, ash-sampling and characterization plans, emergency coordination, spill and stormwater plans, wind and dust controls, local approvals, and required engineering documentation.⁵ These conditions precedent do not grant discretion to operate first and supply safeguards later but rather

⁴ See *Ex. 8*.

⁵ *Id.*

restrict MediWaste's operations and ensure safeguards. Nevada administrative law does not authorize a reviewing tribunal to replace an agency's supported factual and technical judgment with its own. *Office of State Eng'r v. Morris*, 107 Nev. 699, 701 (1991), *Tighe* at 635. NDEP's choice to impose enforceable conditions precedent was a regulatory judgment supported by the record's defined process, capacities, waste restrictions, and monitoring framework.

Appellants also assume that each later approval necessarily changes the Permit. The Permit instead incorporates the approved Sampling and Analysis Plan and financial-assurance materials as governing permit documents and provides that the most restrictive document controls in the event of conflict. If a later proposal materially changes the authorized operation, the Permit requires MediWaste to notify NDEP of deviations or changes affecting compliance, and NDEP retains authority to modify, suspend, or revoke the Permit. NAC 444.6435. Allegations that NDEP may fail to follow applicable regulatory requirements in the future are inherently speculative, provide no basis for overturning a valid agency decision, and does not satisfy Appellants' burden to demonstrate that NDEP's permitting decision was arbitrary, capricious, unsupported by substantial evidence, or otherwise contrary to law. *City of North Las Vegas* at 686.

C. NDEP Provided Meaningful Public Review of the Facility It Permitted.

Nevada's regulations allow interested persons, within 30 days after notice, to submit comments or request a public hearing identifying the issues to be raised. The authority may hold a hearing and may extend public review. NAC 444.6415. NDEP afforded those opportunities here. The public comment period ran for 30 days followed by a two-hour, in-person hearing held by NDEP, with additional comments being accepted through the following business day.⁶ The Fact Sheet described the Project including the site, buildings, processing units, maximum inventory, accepted and prohibited wastes, storage practices, ash generation, residue testing, stormwater controls, and fire suppression. It also explained how the public could obtain the administrative record and submit comments.⁷

⁶ *Ex. 2* at 1

⁷ *Id.*

Appellant Brown's argument that meaningful comment was impossible is contradicted by the specificity of his own 112-page Opening Brief. He identifies exact permit provisions, sampling methods, numerical limits, storage periods, equipment counts, waste categories, and pre-operational requirements.⁸ His extensive substantive objections demonstrate that the permit terms and facility design were sufficiently defined to allow opportunity for detailed public criticism. The possibility that a future material modification may require additional process does not invalidate the process already completed. The present appeal concerns NDEP's August 31, 2026, decision on the defined facility and conditions in SW1900REV00. Speculation about an unidentified future change does not establish that the completed notice, comment, hearing, and response process in this matter was unlawful.

D. The Emergency-Response and Medical-Response-Pathway Arguments Do Not Establish Reversible Error.

Appellants argue that NDEP should have determined whether local responders possess particular staffing, equipment, training, decontamination resources, and medical-transport capabilities before issuing the Permit. However, they identify no solid-waste permitting provision that requires the regional-capability study they propose. Their preferred inquiry cannot replace the governing question: whether substantial evidence supports NDEP's decision and whether that decision violates an applicable legal requirement. A reviewing body may not reweigh the evidence or make factual determinations in the first instance and must sustain an administrative decision supported by substantial evidence. *Gilman* at 65; *Apeceche* at 725.

Here, the record contains concrete emergency safeguards. Building 1 has an automatic sprinkler system activated by fire or smoke detection, and fire extinguishers will be distributed throughout the facility. The Permit requires incident reporting within 24 hours for noncompliance, releases, fires, explosions, and conditions that may endanger human health or the environment, followed by a written report addressing injuries, hazards, response measures, recovered material,

⁸ See *Brown's Opening Brief*.

and prevention of recurrence.⁹ More importantly, the facility cannot operate until MediWaste provides its emergency-action plan, fire-suppression provisions, and 24-hour hazardous-material-response provisions to the local fire department and first responders; provides subsequent updates; and demonstrates that coordination to NDEP. This condition requires an actual pre-operational demonstration to NDEP, not merely preparation of an internal plan.

Appellant Cruise's allegation that the local fire department lacks capacity to address a hazardous-waste spill is not accompanied in her Opening Brief by supporting evidence identifying the statement's date, context, scope, or connection to the waste streams authorized by this Permit. The Permit prohibits RCRA hazardous waste, hazardous pharmaceutical waste, state-listed hazardous waste, bulk chemotherapy waste, compressed cylinders, and numerous other identified hazards. If incoming material does not conform, it must be rejected and may not be stored onsite.

The presented medical-response-pathway argument similarly identifies questions NDEP *could* ask, but cites no mandatory permit element which NDEP omitted. The Permit regulates the facility's waste operations and requires coordination with public responders before operation. Appellants do not identify a governing provision requiring NDEP to select hospitals, prescribe ambulance routes, guarantee treatment capacity, or prepare a regional trauma-transfer study before issuing a conditional solid-waste permit. It stands that NDEP reasonably could conclude that the existing fire-suppression system, prohibited-waste restrictions, mandatory incident reporting, and pre-operational emergency coordination supplied an adequate permitting framework. As a result, the Commission may not reverse merely because Appellants would have demanded a broader study or assigned different weight to the record. *Tighe* at 635; *United Exposition* at 424.

E. The Fuel-Supply and Hypothetical Equipment-Substitution Arguments Do Not Demonstrate Error.

Appellant Brown argues that the facility's air-permitted configuration uses natural gas and asks NDEP to establish the precise source, delivery method, storage arrangement, maximum simultaneous demand, and available flow and pressure and separately asks what review would

⁹ See *Ex. 1*; *Ex. 2*; *Ex. 3*; *Ex. 8*.

apply if MediWaste later substituted propane, different burners, modified thermal oxidizers, or another equipment configuration. Neither argument identifies a defect in the facility that NDEP actually authorized. The Permit fixes the relevant solid-waste configuration: seven pyrolysis units, a maximum annual throughput of 15,120 tons, and an average permitted throughput of 41.4 tons per day. The Fact Sheet describes a fully enclosed, three-stage treatment process and identifies the equipment's function in converting incoming waste to vapors, oxidizing volatile compounds, and providing additional reaction time.

Appellant Brown neither (1) identifies a solid-waste regulation requiring an executed fuel-supply agreement, a designated utility, or a completed compressed or liquefied-natural-gas delivery system as a prerequisite to permit issuance, nor (2) presents evidence that the permitted system cannot obtain or use its authorized fuel. His questions about possible delivery arrangements do not establish that NDEP's decision was clearly erroneous on the record before it. The substitution argument is even further removed from the challenged decision. The Permit does not authorize an unidentified substitute-fuel configuration. It requires MediWaste to inform NDEP of deviations or changes in operations that may affect compliance, and it preserves NDEP's authority to modify the Permit for cause or to suspend or revoke it for noncompliance.¹⁰ A hypothetical future proposal therefore cannot establish that NDEP erred in approving the presently identified configuration.

Commission review remains confined to the challenged agency action and the evidence properly presented to NDEP. As NAC 445B.8914 restricts consideration of evidence not submitted before the decision when public comment was allowed unless the Commission finds reasonable cause for the omission, the Commission should reject an invitation to adjudicate the legality of fuel or equipment changes that have not been proposed, evaluated, or approved.

F. No Reversible Error Re: Local Approval or Application Version Control.

1. *The Permit Preserves Local Approval as a Condition of Operation.*

¹⁰ See Ex. 8 at 6.

Appellant Brown contends that the facility's design evolved after the Pahrump Regional Planning Commission approved a conditional use permit on April 10, 2024, and asks the Commission to determine whether the County must conduct further review. The Fact Sheet discloses the existing County approval, identifies the parcel as zoned for heavy industrial use, and describes the final facility NDEP evaluated. The Permit does not purport to enlarge or replace the County's approval. Instead, it requires MediWaste to submit letters of local agency approval at least 30 days before operations begin.¹¹ That condition prevents MediWaste from relying on the Permit alone to bypass applicable local authorization. Brown presents no County decision declaring the existing conditional use permit invalid, limiting its scope, or requiring a new proceeding. He instead asks this Commission to decide, in the first instance, how Nye County should apply its land use approval to the final project. However, reviewing bodies do not make factual determinations in the first instance and do not substitute their judgment for an agency's where substantial evidence supports the challenged administrative decision. *Gilman* at 65; *Office of State Eng'r* at 701. The relevant NDEP decision is supported by the disclosed County approval, the heavy-industrial zoning, the detailed final facility description, and the Permit's independent requirement for pre-operational letters of local agency approval. Appellants have not shown that NDEP exceeded its authority, used unlawful procedure, or acted arbitrarily by preserving local approval as a condition precedent rather than adjudicating the scope of a County permit.

2. *The Final Permit Unambiguously Identifies the Controlling Application.*

Appellant Brown also points to an earlier reference to application version 7.0 and argues that the public record does not establish which application was reviewed. But he acknowledges that the final Permit identifies Vulcan Medical Waste Treatment Facility Application v6.0, submitted April 2, 2026, as Attachment 1 and incorporates it into the Permit. The Permit's modification chronology identifies version 6.0, submitted April 2, 2026, as the application supporting the Permit. Its specific conditions again incorporate version 6.0 and provide that, in the event of a conflict among incorporated permit documents, the most restrictive requirement

¹¹ See *Ex. 8* at 10.

governs. The Permit therefore leaves no uncertainty about which application controls the authorized operation. The Fact Sheet additionally informed the public that the administrative record included the draft Permit and correspondence and could be reviewed through NDEP's records system or by contacting the agency. The final Fact Sheet and Permit also consistently describe the same material facility features: a 4.70-acre site, two buildings, seven processing units, enclosed handling, specified waste streams, and hydrated-ash characterization and disposal.

Brown's asserted inability to locate a document does not prove that NDEP withheld it or evaluated a materially different project. Nor does the presence of an unexplained earlier version number establish prejudice. The burden rests with the party challenging an administrative decision to establish invalidity, and the decision is treated as reasonable and lawful unless set aside on a recognized ground. NRS 233B.135. The final Permit's repeated identification and incorporation of version 6.0, together with the consistent description of the permitted facility, provides substantial evidence supporting NDEP's document-control determination.

G. The Permit Establishes Objective Waste-Acceptance, Storage, and Tracking Controls.

1. *Pathological Waste Is Subject to the Permit's Acceptance and Exclusion Criteria.*

Appellant Brown argues that pathological waste could become putrescible and that the Permit should prescribe additional fixation, refrigeration, temperature-monitoring, inspection, and rejection criteria. The Permit, however, does not authorize all biological material without restriction. It authorizes specified pathological waste decanted with formaldehyde, formalin, or other preservatives while expressly prohibiting putrescible waste, complete human remains, fetuses, embryos, hazardous waste, and listed chemicals.¹² The facility also cannot accept an undesignated waste stream without NDEP's prior written approval and nonconforming waste must be rejected at the gate and cannot be stored onsite. These are enforceable boundaries, not recommendations. Operational controls reinforce those restrictions. Incoming waste arrives in

¹² See "Permit Conditions" of Ex. 8.

enclosed tractor-trailers and remains in closed containers or double-packaged bags. There is no open waste management or stockpiling. Each container is scanned upon receipt, tied to its staging trailer, tracked while onsite, and scanned again before destruction.

Brown's argument assumes that authorized pathological waste will arrive or become putrescible despite the express prohibition. Again, possibility of future noncompliance does not show that NDEP's current decision lacked substantial evidence. The Permit makes MediWaste responsible for all waste received, preserves NDEP's inspection and sampling authority, and subjects the facility to suspension or revocation for noncompliance. NDEP's selection of a categorical prohibition, controlled acceptance, enclosed storage, container-level tracking, and a maximum residence time represents a technical permitting judgment. As an administrative determination supported by evidence must be sustained even when a challenger prefers additional safeguards, the Commission may not reweigh that evidence. *Gilman* at 65; *Apeceche* at 725.

2. *The Fifteen-Day Onsite Limit Is Definite and Enforceable.*

Appellant Brown next argues that the Permit should regulate elapsed time beginning at waste generation rather than arrival at the facility. The Permit establishes a precise limit for the operation it regulates: incoming and unprocessed waste may remain onsite no more than 15 days from receipt. The tracking system records acceptance and destruction, providing objective endpoints for determining compliance. Brown identifies no Nevada permitting provision requiring this facility's Permit to impose a single generation-to-treatment clock governing conduct by generators, transporters, transfer facilities, and entities in other jurisdictions. His reliance on possible pre-arrival storage does not make the onsite condition indefinite or unenforceable. At the time of its review, NDEP had evidence concerning the maximum onsite inventory, delivery system, container tracking, staging locations, handling methods, scheduled acceptance, and maximum residence time. A reasonable person could find that evidence adequate to support NDEP's decision and therefore the Commission should not replace the defined onsite limit with a different multijurisdictional standard that Appellant has not tied to an applicable Nevada permit requirement.

H. The Residue, Groundwater, Direct-Disposal, and Monitoring Arguments Do Not Overcome the Substantial Evidence Supporting the Permit.

1. *The Permit Establishes a Protective Residue-Characterization and Disposal Pathway.*

Brown contends that NDEP was required to identify a specific receiving landfill and conclusively classify all future residue before issuing the Permit. That position overlooks the reason for characterization: the appropriate disposal pathway depends on the residue's actual tested properties.

The Permit requires analysis by a Nevada-certified laboratory and establishes TCLP thresholds of 5 milligrams per liter for arsenic, 100 for barium, 1 for cadmium, 5 for chromium, 5 for lead, 0.2 for mercury, 1 for selenium, and 5 for silver. It separately limits dioxins and furans to 20 nanograms toxic equivalents per kilogram, dry weight. These are objective numerical standards. The Fact Sheet describes batch retention samples, management of each combined roll-off load under the most conservative sample result, and hazardous-waste management of the entire load if a sample exhibits a hazardous characteristic. No ash may leave the facility until representative sampling from each unit has been submitted to NDEP, and NDEP must approve disposal at any Nevada receiving facility. The Permit therefore does not authorize disposal at an unapproved location but rather requires disposal at an appropriately permitted facility, conditions the destination on characterization, and reserves NDEP approval for Nevada disposal. Identifying a facility before knowing whether a load is hazardous or nonhazardous would not provide greater protection than requiring testing first and selecting an appropriately permitted destination based on the results.¹³

The expected residue volume was also quantified. NDEP evaluated a projected range from 1,680 to 33,600 pounds per day and from 604,800 to 12,096,000 pounds per year. Residue must remain in a fully sealed 40-cubic-yard container, and each addition and visual inspection must be

¹³ See Ex. 1; Ex. 8.

documented. These provisions supplied substantial evidence for NDEP's conclusion that residue could be contained, characterized, tracked, and lawfully routed for disposal.

2. *The Groundwater Allegation Does Not Address the Facility's Actual Water and Containment Controls.*

Appellant Cruise asserts that the facility presents an imminent threat to Basin 162, Pahrump's water source, but her Opening Brief identifies no supporting study, release pathway, contaminant concentration, or facility-specific analysis. The permitting record, by contrast, states that the process requires no water and generates no process wastewater. The Fact Sheet further reports that no watercourse is located on or near the Project. Stormwater travels north across the asphalt surface to native ground and an onsite detention basin, with additional grading intended to provide containment. Incoming medical waste remains in closed packaging and enclosed trailers, trailer staging uses reusable diking, and the trucks are sealed and leakproof. Ash is kept in a sealed container subject to inspections for spills. Cruise's allegation does not engage those controls or identify contrary technical evidence that NDEP failed to consider.

Administrative review asks whether substantial evidence supports the agency's decision, not whether a challenger can posit a potential risk. *United Exposition* at 424. On this record, NDEP had a reasonable basis to conclude that the absence of process wastewater, enclosed waste handling, paved staging, containment measures, stormwater detention, and sealed residue storage addressed the asserted groundwater pathway.¹⁴

3. *Speculation Re: Direct Disposal Fails Standard of Review.*

Appellant Brown argues that qualifying incoming medical waste might be sent directly to a landfill if pyrolysis becomes unavailable or uneconomic. The Permit authorizes a medical-waste pyrolysis facility, defines incoming material as waste intended for treatment in the pyrolysis units, and requires reporting of rejected outgoing waste and the receiving facility and does not authorize MediWaste to operate an unrestricted disposal facility. MediWaste is responsible for all accepted waste, limits storage to 15 days, and requires notice of deviations or operational changes that may

¹⁴ *Id.*

affect compliance.¹⁵ Speculative regarding future operation outside of those terms would present a question of future compliance, not a defect in NDEP's approval of the defined Project. In light thereof, Brown supplies no evidence that MediWaste presently intends to bypass treatment – his Opening Brief expressly disclaims such an allegation. As the Commission reviews NDEP's actual decision on the record before the agency and does not adjudicate hypothetical future noncompliance, Appellant provides no basis to disturb NDEP's decision.

4. *Existing Monitoring Consequences Are Sufficient to Sustain Permit Issuance.*

Appellant Brown's final argument asks for clarification of operating responses to specified thermal-oxidizer conditions, stack-test results, and ash-characterization results and expressly concedes that this ground, standing alone, does not necessarily require reversal, suspension, or remand. The Commission's task is not to provide clarification or determine whether it could draft additional conditions but is to determine whether the Permit must be reversed under the incorporated grounds for review. As the record contains numerical limits, laboratory requirements, reporting duties, disposal restrictions, inspection authority, and consequences for hazardous residue, Appellant Brown's request for clarification does not establish the unlawful procedure, clear error, or arbitrary and capricious action required to satisfy his challenging burden.

VI. CONCLUSION.

Appellants seek reversal of the Permit or, alternatively, remand and suspension or abeyance pending completion of the alleged deficiencies. That relief is unwarranted under the governing standard of review. Appellants have not demonstrated that NDEP violated a constitutional or statutory provision, exceeded its authority, employed an unlawful procedure, committed another error of law, issued a decision clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record, or acted arbitrarily, capriciously, or through an abuse of discretion. The administrative record instead shows that NDEP reviewed a detailed Application, conducted the required public process, evaluated the proposed facility under the governing statutes and regulations, imposed enforceable pre-operational and operational conditions, and retained

¹⁵ *Id.*

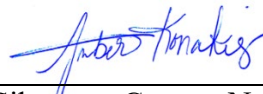
continuing oversight and enforcement authority. Because substantial evidence supports the permitting decision and Appellants have not met their burden to establish a ground for reversal under NAC 444.980, the Commission should affirm NDEP's issuance of Permit No. SW1900REV00 and dismiss the Appeal.

THEREFORE, MediWaste respectfully requests that the Commission:

1. Affirm NDEP's August 31, 2026 final decision issuing Solid Waste Management Facility Permit No. SW1900REV00;
2. Deny Appellants' requests for reversal, remand, suspension, or abeyance; and,
3. Dismiss the appeals.

DATED AND RESPECTFULLY SUBMITTED this 22nd day of September, 2026.

KAEMPFER CROWELL



Sihomara Graves, No. 13239
Amber Konakis, No. 16565
50 W. Liberty Street, Suite 1100
Reno, Nevada 89501

*Attorneys for Intervenor
MediWaste Disposal LLC*

CERTIFICATE OF SERVICE

Pursuant to NAC 445B.8925(f), I do hereby certify that on this 22nd day of September, 2026, I electronically mailed the Intervenor's Response Brief to the following:

State Environmental Commission
Sheryl Fontaine, Executive Secretary
901 South Stewart Street, Ste 401
Carson City, NV 89701
sfontaine@ndep.nv.gov
Reviewing Authority

A. J. Brown
3216 Mount Charleston Drive
Pahrump, Nevada 89048
V540501@gmail.com
Appellant

Cheryl and Raymond Varkalis
1560 Indole Street
Pahrump, Nevada 89048
happyhappyhappy997@gmail.com
Appellant

Katie Armstrong, Esq.
Nevada Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
KSArmstrong@ag.nv.gov
Attorney for Defendant

John O'Brien
4470 Homestead Road
Pahrump, Nevada 89048
jobriennevada@gmail.com
Appellant

/s/ Kaitlin Snyder

An employee of Kaempfer Crowell