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BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

In Re:

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

**MEDIWASTE DISPOSAL LLC’S REPLY
IN SUPPORT OF PETITION FOR LEAVE
TO INTERVENE AND RESPONSE TO
MOTION TO CLARIFY AND LIMIT THE
SCOPE OF INTERVENTION, EVIDENCE,
AND ARGUMENT**

I. INTRODUCTION

Brown does not dispute that MediWaste has a direct and substantial interest in the outcome of this appeal or that intervention was properly granted. He nevertheless asks the Commission to special limitations on MediWaste’s participation, restricting the arguments MediWaste may make concerning NDEP’s decision and the evidence it may identify in support of that decision. Neither NAC 445B.8915 nor the rules governing the Commission’s review support those restrictions.

MediWaste does not seek to speak for NDEP, reconstruct NDEP’s decision making process, or supplement the administrative record with evidence created after issuance of the Permit. It seeks to do precisely what its status as an intervenor permits: defend the Permit directly affecting its rights by responding to Appellants’ arguments, identifying evidence in the administrative record, and explaining why that record and applicable law support NDEP’s decision. The existing rules governing the scope of review and admissibility of evidence apply equally to all parties and adequately address the concerns raised by Brown. The Commission

1 should therefore deny Brow’s Motion and leave its Order granting intervention in place without
2 additional limitations.

3 **II. ARGUMENT**

4 **A. MediWaste Is Entitled to Respond Fully to the Challenges to its Permit.**

5 NAC 445B.8915 permits a person who may be directly and substantially affected by a
6 proceeding to petition for leave to intervene. MediWaste plainly satisfies that standard. As the
7 holder of the Permit that is the subject of this appeal, MediWaste will be directly and substantially
8 affected by any decision affirming, modifying, or reversing NDEP’s decision. The Commission
9 has already made that finding, granting MediWaste’s Petition because MediWaste is the named
10 operator under the challenged Permit and “will therefore be directly affected by a decision made
11 by the Commission.” Brown does not dispute MediWaste’s direct interest or its entitlement to
12 intervene.

13 Brown instead argues that MediWaste’s participation should be confined largely to its
14 financial and operational interests, while NDEP alone addresses whether it lawfully issued the
15 Permit. But that proposition would substantially impair MediWaste’s intervention and the reason
16 behind it. Brown seeks reversal or remand of NDEP’s decision to issue MediWaste’s Permit.
17 MediWaste must therefore be permitted to respond to the grounds on which Brown seeks to
18 overturn that Permit. Doing so does not broaden the issues before the Commission. Instead, it
19 directly addresses the issues Brown himself placed before it.

20 NAC 445B.8915(3) does not require a different result. Although that provision permits
21 intervention “with respect to the matters set forth in the petition,” MediWaste’s Petition expressly
22 sought leave to fully participate in the appeal, including briefing and the presentation of evidence
23 and witnesses, in order to defend the Permit against Appellants’ challenges. MediWaste further
24 represented that it did not intend to expand the issues beyond those raised in the Appellants’

1 Notices of Appeal. Thus, MediWaste’s participation does not “unreasonably broaden the issues”
2 within the meaning of NAC 445B.8915(3).

3 NAC 445B.8925(2)(b) likewise expressly permits both NDEP and an intervening party to
4 submit response briefs. Nothing in that rule limits an intervenor to discussing only its economic
5 interests or reserves arguments concerning the challenged agency decision exclusively to the
6 agency. There is therefore no basis to narrow the intervention the Commission has already granted.

7 **B. MediWaste May Point to Evidence in the Record that Supports NDEP’s**
8 **Decision.**

9 Brown’s Motion also attempts to draw a distinction between NDEP’s ability to defend its
10 decision and MediWaste’s ability to explain what the administrative record demonstrates.
11 MediWaste agrees that it cannot offer attorney argument as evidence of an undocumented internal
12 agency decision making process. But that does not prevent MediWaste from identifying evidence
13 contained in the administrative record, explaining its significance, and arguing that the record
14 supports issuance of the Permit.

15 Under NAC 445B.890(2)(e), one of the grounds asserted by Brown is that NDEP’s decision
16 was “clearly erroneous in view of the reliable, probative and substantial evidence, *on the whole*
17 *record.*” (Emphasis added). Consistent with that standard, Nevada courts reviewing agency
18 decisions examine “the record” to determine whether the challenged decision “is supported by
19 substantial evidence.” *Tighe v. Las Vegas Metro. Police Dept.*, 110 Nev. 632, 634, 877 P.2d 1032,
20 1034 (1994).

21 Brown’s position seems to be that only NDEP can reference which specific pieces of
22 evidence support its decision, but that is not the applicable standard. MediWaste submitted much
23 of the information contained in NDEP’s administrative record. It may identify that information,
24 explain what it demonstrates, and argue that the evidence in the record as a whole supports NDEP’s

1 decision. Doing so is legal advocacy based upon the administrative record; it is not testimony
2 concerning NDEP's internal process and deliberations.

3 For this same reason, Brown's contention that MediWaste is attempting to "speak for
4 NDEP" is without merit. MediWaste does not need to establish what an NDEP official subjectively
5 "intended" in order to argue that the record as a whole supports the agency's decision.
6 Accordingly, there is no basis to prohibit MediWaste from relying on the administrative record as
7 a whole and applicable law to respond to Brown's challenges and defend its Permit.

8 **C. The Existing Evidence Rules Apply to All Parties and Do Not Provide a Basis**
9 **To Limit the Scope of Intervention.**

10 Brown's remaining concerns mainly address the admissibility and proper use of evidence,
11 not the scope of MediWaste's intervention. NAC 445B.8914 already governs and addresses those
12 concerns.

13 NAC 445B.8914(5) provides that, in a hearing to affirm, modify, or reverse a covered
14 NDEP action, the Commission will not consider evidence that was not submitted to NDEP before
15 it issued the decision under appeal unless NDEP allowed a period for public comment and the
16 Commission finds reasonable cause for the party's failure to submit the evidence. That rule already
17 applies to every party. Intervention does not somehow exempt MediWaste from the rules already
18 governing these procedures. And MediWaste does not seek to use new evidence to fill a gap in the
19 record, nor does Brown identify a particular exhibit or other evidence offered by MediWaste that
20 falls outside of the record. Brown's request is therefore premature and unnecessary. If a party later
21 offers particular evidence that Brown believes is inadmissible and outside the record, he may raise
22 an appropriate objection at that time. But a hypothetical concern that MediWaste *might* offer
23 evidence outside the record does not provide a basis to impose restrictions on MediWaste's
24 intervention now. There is therefore no basis to limit the scope of intervention.

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1 **III. CONCLUSION**

2 For the foregoing reasons, MediWaste respectfully requests that the Commission deny
3 Brown's Motion and leave its September 21, 2026 Order Granting Petition for Leave to Intervene
4 in place, without added limitations.

5 DATED AND RESPECTFULLY SUBMITTED this 24th day of September, 2026.

6 KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

Pursuant to NAC 445B.8925(f), I do hereby certify that on this 24th day of September, 2026, I electronically mailed the preceding document to the following:

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