

1 **BEFORE THE STATE OF NEVADA**
2 **STATE ENVIRONMENTAL COMMISSION**

3 In Re:

4 Appeal of Medical Waste
5 Treatment Facility Permit:
6 Permit No. SW1900REV00
7 MediWaste Disposal LLC

NEVADA DIVISION OF
 ENVIRONMENTAL PROTECTION'S
 RESPONSE BRIEF

8 The Nevada Division of Environmental Protection ("NDEP"), by and through
9 counsel, AARON D. FORD, Attorney General, and KATIE S. ARMSTRONG, Senior
10 Deputy Attorney General, hereby files its Response to A.J. Brown, Sharon Cruise, Cheryl
11 Varkalis, and Raymond Varkalis' ("Appellants") Appeal of Solid Waste Management
12 Facility Permit No. SW1900REV00 (the "Permit"). This Response is based on the
13 attached Memorandum of Points and Authorities and all pleadings on file, the exhibits
14 attached hereto, as well as all testimony and oral argument the State Environmental
15 Commission ("SEC") will hear on this matter.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 NDEP's decision to approve MediWaste Disposal, LLC's ("MediWaste") permit
19 application for a medical waste pyrolysis facility is well supported by the administrative
20 record. To prevail on appeal, Appellants must show that NDEP's decision to issue the
21 Permit was in violation of a constitutional or statutory provision; was made upon
22 unlawful procedure; was affected by other error of law; was clearly erroneous in view of
23 the evidence on the whole record; or was arbitrary, capricious, or an abuse of discretion.
24 *See* NAC 445B.890(2).

25 **II. STANDARD OF REVIEW**

26 The SEC must decide this appeal based on the relevant and applicable standards of
27 Review set forth in NAC 445B.890. In this case, the Appellants' assert that NDEP's
28 decision to grant the Permit was in violation of a constitutional or statutory provision;

1 was made upon unlawful procedure; was affected by other error of law; was clearly
2 erroneous in view of the evidence on the whole record; or was arbitrary, capricious, or an
3 abuse of discretion. The SEC, as the reviewing body, must not substitute its judgment for
4 that of the agency. Instead, courts recognize that NDEP, as the regulatory agency, is in
5 the best position to review evidence and make reasoned and supported decisions on
6 permit applications. *See State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 87, 787 P.2d
7 408, 409 (1990).

8 In other words, the SEC must grant NDEP's decision deference. On questions
9 of law, "an administrative agency charged with the duty of administering an act is
10 impliedly clothed with the power to construe the relevant laws and set necessary
11 precedent to administrative action, and the construction placed on a statute by the
12 agency charged with the duty of administering it is entitled to deference." *Nev. Pub.*
13 *Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 624 (2013). "On questions of fact, an
14 administrative agency's decision is given deference; therefore, a reviewing court must
15 confine its inquiry to determining whether the record provides substantial evidence
16 supporting the administrative agency's decision." *State Indus. Ins. Sys. v. Bokelman*, 113
17 Nev. 1116, 1119, 946 P.2d 179, 181 (1997). "An agency's conclusions of law which are
18 closely related to the agency's view of the facts are entitled to deference." *Id.* This
19 standard is met so long as a reasonable person could reach the same decision as the
20 agency with the evidence in front of it. *See White Pine Cty. Sch. Dist. v. Benavidez*, No.
21 70908, 2017 WL 4217042, at *1 (Nev. App. Sept. 15, 2017) ("substantial evidence is
22 evidence which a reasonable mind would accept as adequate to support a conclusion").
23 For these reasons, the SEC should uphold NDEP's decision to issue the Permit if it finds
24 evidence in the administrative record reasonably adequate to support the decision.

25 **III. STATEMENT OF FACTS**

26 **A. Project and Permitting Summary**

27 The MediWaste Medical Pyrolysis Facility is a pyrolysis facility owned and
28 operated by MediWaste Disposal LLC located in Pahrump, Nevada. The pyrolysis facility

1 is a solid waste management facility serving Nevada, California, and other various
2 markets throughout North America.

3 MediWaste submitted its application for a Solid Waste Management Facility
4 Permit on January 14, 2026. *See* Solid Waste Permit Application **Revised January 2026**
5 attached as **Exhibit 1**. This application is referred to as Version 5 (“v5.0”). Although
6 several versions of the application were submitted as early as May 6, 2024, MediWaste
7 revised the technology/processes being used; thus, the applications applicable to this
8 appeal are v5.0 and Version 6 (“v6.0”).

9 On March 18, 2026, NDEP sent MediWaste comments on Application v7.0.¹ *See*
10 March 18, 2026, NDEP letter regarding Comments on Application attached as **Exhibit 2**.
11 The letter included comments regarding the fire suppression plan, the financial
12 assurance, and ash sampling frequency plan. *Id.* On April 2, 2026, MediWaste responded
13 to NDEP’s comments. *See* April 2, 2026, MediWaste response attached as **Exhibit 3**.
14 MediWaste acknowledged the location of the fire suppression system was mistakenly
15 noted as being in Building 1 when it’s located in Building 2 where the pyrolysis unit
16 is housed. *Id.* MediWaste indicated the revised application is correct. *Id.* Further,
17 MediWaste acknowledged it will comply with the financial assurance requirements found
18 in the compliance schedule items. *Id.* Last, MediWaste included a draft Ash Sampling
19 Frequency Plan with the revised application. *Id.*

20 As NDEP was satisfied with MediWaste’s comments and v6.0 of the draft
21 application, they proceeded to hold a robust public comment period regarding the
22 application. The public comment period ran from April 1, 2026, through the public
23 hearing held on July 7, 2026, well beyond the 30-day requirement. *See* NDEP Response to
24 Public Comments attached as **Exhibit 4**, *See* NAC 444.641. During this period, NDEP
25 received written comments and verbal comments offered during a public hearing held on
26 July 7, 2026. *Id.* On August 31, 2026, NDEP issued a letter to MediWaste noticing them
27

28 ¹ The v7.0 was a typo by MediWaste’s new consultant, Trinity, due to their naming
convention. NDEP’s letter contains comments to v5.0 of the permit application.

1 of the permit issuance and public comment review. *See* NDEP Notice of Permit Issuance
2 and Public Comment Review attached as **Exhibit 5**. The permit became effective August
3 31, 2026. *Id.* The letter indicated that given the volume of public comments received,
4 NDEP prepared a consolidated response document in lieu of individual responses to each
5 submission. *Id.* Further, based on those comments portions of the draft permit were
6 updated. *Id.* V6.0 was the permit application ultimately approved by NDEP and
7 incorporated into the Permit. *See* Solid Waste Permit Application **Revised April 2026**
8 attached as **Exhibit 6** and Solid Waste Management Facility Permit August 2026
9 attached as **Exhibit 7**.

10 Eleven appeals have been filed, seven of which have waived their right to a
11 hearing within 20 days, and one didn't respond regarding waiver of the 20-day
12 requirement. The Appellants that are part of this appeal did not waive their right to a
13 hearing within 20 days. On September 16, 2026, Appellant A.J. Brown filed an Opening
14 Brief. Pursuant to NAC 445B.8925, briefs filed with the SEC regarding an appeal
15 must not exceed 20 pages in length. However, Appellant A.J. Brown's Opening Brief is
16 112 pages, 92 more pages than allowed. Further, Appellant Sharon Cruise filed an
17 Opening Brief on September 16, 2026, and Appellants Cheryl and Raymond Varkalis did
18 not file Opening Briefs.

19 Due to the time constraints of the hearing being held within 20 days of filing an
20 appeal and the extraordinary length of Appellant A.J. Brown's Opening Brief, this
21 Response will focus on NDEP's compliance with all statutory and regulatory
22 requirements when issuing the Permit. This Response will also clarify which allegations
23 are relevant to the Permit and which allegations are outside of NDEP's scope in this
24 permitting process. Further, this Response will briefly address the Appellant Cheryl
25 Varkalis and Raymond Varkalis' allegations submitted in Form #3. Last, any allegations
26 involving the Air Pollution Control Permit issued by NDEP to the MediWaste Facility
27 will not be addressed as that permit is separate and distinct from the Permit at issue in
28 this appeal.

1 **B. Pyrolysis Facility**

2 The facility is permitted to treat by pyrolysis medical waste, a type of solid waste.
3 *See* Solid Waste Management Facility Permit August 2026 attached as **Exhibit 7**.
4 Specifically, the permit authorizes the construction and operation of a solid waste
5 pyrolysis facility, consisting of seven pyrolysis units, contiguous land, structures, and
6 other appurtenances improvements for the handling and thermal processing of solid
7 waste. *Id.*

8 Pyrolysis is the chemical decomposition of organic (carbon-based) materials
9 through the application of heat. Pyrolysis occurs in the absence or near absence of oxygen,
10 and it is thus distinct from combustion (burning), which can take place only if sufficient
11 oxygen is present. The only outputs from the pyrolysis process are air emissions and
12 hydrated ash. NDEP issued an Air Pollution Control Permit to MediWaste; however, this
13 appeal only concerns the Solid Waste Management Facility Permit.

14 **IV. LEGAL ANALYSIS**

15 **A. The Solid Waste Management Facility Permit Issued by NDEP to**
16 **MediWaste Complies with the Nevada Revised Statutes and the**
17 **Nevada Administrative Code**

18 Chapter 444 of the Nevada Revised Statutes (“NRS”) and Chapter 444 the Nevada
19 Administrative Code (“NAC”) sets forth the requirements for the collection and disposal
20 of solid waste and designates NDEP as the solid waste management authority. *See*
21 NRS 444.495. Per NRS 444.553, the solid waste management authority shall issue
22 permits to operate solid waste management facilities.

23 NDEP permitted the MediWaste facility pursuant to NAC 444.676 as a “System to
24 process waste: Other methods.” NAC 444.676 requires that “[b]efore any method of solid
25 waste processing, not otherwise provided for in these regulations, is placed into operation,
26 complete plans, specifications and design data must meet the approval of the solid waste
27 management authority.” Accordingly, upon receiving the MediWaste permit application,
28 NDEP performed all the necessary reviews which led to the ultimate approval and
issuance of the Permit.

1 **1. Permitting Process**

2 Per NAC 444.641(1), within 45 days of receiving a permit application, NDEP must
3 determine if the application is administratively complete. Specifically, it must contain all
4 specified documents and supporting information required by NAC 444.676. Once
5 determined complete, NAC 444.641(2) requires NDEP to determine if it complies with all
6 applicable statutes and regulations. If NDEP determines the permit application complies
7 with all applicable statutes and regulations, NDEP must issue a notice of intent to issue
8 or deny a permit and accept comments for 30 days. *See* NAC 444.641(3). Further, the
9 notice must include a procedure for obtaining copies of documents and comments
10 submitted and a fact sheet describing the proposed facility. *Id.*

11 The permitting process described above was initiated by MediWaste on April 1,
12 2026, when they submitted v7.0 of the permit application². On March 18, 2026, NDEP
13 notified MediWaste of deficiencies within the application. *See* March 18, 2026, NDEP
14 letter regarding Comments on Application attached as **Exhibit 2**. Specifically, NDEP
15 commented on the fire suppression plan, the financial assurance requirement, and an ash
16 sampling frequency plan. *Id.* MediWaste responded on April 2, 2026, indicating the
17 location of the fire suppression plan was mistakenly noted as being in Building 1 but is
18 located in Building 2 where the pyrolysis unit is housed. *See* April 2, 2026, MediWaste
19 response attached as **Exhibit 3**. Further, MediWaste acknowledged it will comply with
20 the financial assurance found in the schedule of compliance and included an ash sampling
21 frequency plan with the revised application v6.0. *Id.* NDEP was satisfied with the
22 response and v6.0 of the permit application, so they proceeded with a Public Notice and
23 Request for Comment. *See* NDEP's Public Notice – Request for Comment attached as
24 **Exhibit 8**. A fact sheet describing the proposed facility, availability of the documents
25 submitted with the application and the procedure for public review and comment was also
26 issued by NDEP. *Id.* All requirements of NAC 444.641 were met.

27 _____
28 ² As previously established, the v7.0 was a typo and this refers to v6.0 of
permit application.

1 NAC 444.6415-444.6425 sets forth further process requirements of NDEP when
2 issuing permits. In compliance with those provisions, and at the request of Appellants, a
3 hearing was scheduled and noticed, comments were received, comments were responded
4 to, and NDEP issued the Permit. *See* NDEP Response to Public Comments attached as
5 **Exhibit 4**, NDEP's Public Notice – Request for Comment attached as **Exhibit 8**, and
6 NDEP's Notice of Public Hearing attached as **Exhibit 9**. Further, based on the comments
7 and in accordance with NAC 444.6425, several items in the Permit were revised. Thus,
8 the record reflects that NDEP complied with all permitting process requirements
9 contained in NAC 444.6415-6425.

10 **2. Permit Requirements**

11 Per NAC 444.643, a permit to operate issued by NDEP must be (1) issued for the
12 life of the design of the disposal site; (2) must specify the amount and type of solid waste
13 which the disposal site may receive that is consistent with the design and operational
14 plans of the site; and (3) must be issued to a specific operator or owner. All of which is
15 contained in the Permit. *See* Solid Waste Management Facility Permit August 2026
16 attached as **Exhibit 7**. The Permit sets forth how the solid waste will be stored, collected,
17 treated, processed and disposed of that doesn't create a health hazard, public nuisance or
18 impair the environment. Per NAC 444.644, NDEP staff reviewed how the waste would be
19 stored, collected, treated, processed and disposed of concurrently with whether these
20 processes would create a health hazard, be a public nuisance or impair the environment.
21 Further, among other things, NAC 444.644 requires all solid waste systems to be
22 operated in a manner that won't cause or contribute to the pollution of surface or ground
23 waters of the State. NDEP also assessed this requirement and found that there are no
24 water courses near or at the facility. *See* Solid Waste Management Facility Fact Sheet
25 August 2026 attached as **Exhibit 10**. Further, the site is relatively flat with stormwater
26 runoff generally flowing to the north along the asphalt surface on to native ground
27 surface cover and eventually to the stormwater detention basin in the northwest corner of

28 ///

1 the property. *Id.* Further, NDEP indicated the areas surrounding the backside of the
2 property will be graded to provide appropriate measures of stormwater. *Id.*

3 The medical waste will be stored in watertight, tightly covered and clearly labeled
4 containers that are resistant to corrosion consistent with NAC 444.662. *See* Solid Waste
5 Permit Application **Revised April 2026** attached as **Exhibit 6** at NDEP 167 – 168.
6 Consistent with NAC 444.664, the medical waste will be transported to the facility in
7 USDOT approved containers that meet 49 C.F.R 173.134. *Id.* Containers of medical
8 waste will be unloaded via forklift and placed in Building 1, where there will be no floor
9 drains, for weighing and screening. *Id.* Containers will be moved to Building 2 for
10 introduction to the pyrolysis process. *Id.* Finally, the ash captured in the pyrolytic
11 chamber is removed periodically based on accumulation. *Id.* The ash will be placed in end
12 dump tractor trailers or tipper transfer trailers, and all containers will have lids or a tarp
13 system to contain the ash, ensuring the ash is contained and does not pose a risk to the
14 environment. *Id.* Further, the facility will use leakproof and rodent proof containers
15 that are rigid plastic with sealed lids, consistent with NAC 444.668. *Id.* Therefore, the
16 only concern to normal industrial stormwater runoff would be a spill outside of
17 containment that requires notification within 24 hours and cleanup per MediWaste’s Spill
18 Prevention Control and Countermeasure Plan and Stormwater Pollution Prevention
19 Plan. *Id.* at NDEP 175.

20 Furthermore, as the facility is considered a solid waste management facility,
21 NDEP further included financial assurance requirements per NRS 444.566,
22 demonstrating that MediWaste is financially responsible for the facility. *See* Solid Waste
23 Permit Application **Revised April 2026** attached as **Exhibit 6** at NDEP 180.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **B. The Appellants' Allegations Represent a Fundamental Misrepresentation**
2 **of NDEP's Role in This Matter**

3 **1. All Statutorily Required Permit Conditions Must Be Met Prior**
4 **to Operations Beginning and NDEP Met all Public Noticing**
5 **Requirements**

6 Appellant A.J. Brown's Opening Brief contends that NDEP issued the Permit while
7 substantive components of the compliance evaluation remained unresolved and that
8 deferred approvals deprive the public of meaningful review and comment.

9 It appears Appellant A.J. Brown is referring to the items in the schedule of
10 compliance. When NDEP issues a Permit, their review of the Permit is complete and all
11 permitting requirements under Chapter 444 of the NRS and Chapter 444 of the NAC
12 have been fulfilled. Further, all statutorily required permit conditions must be met prior
13 to commencement of operations. The Permit does contain a Schedule of Compliance.
14 These are items that are administrative in nature and ensure on-going compliance of the
15 facility when construction and operation commence. Further, as established above, the
16 public was able to review and comment on the permit application; thus, the public was
17 not deprived of meaningful review and comment.

18 **2. The Permit's Emergency Action Plan, Fire-Suppression**
19 **Provisions and 24-Hour Hazardous Material Response**
20 **Provisions Comply with Statute and Regulation**

21 Appellant A.J. Brown contends that the emergency response planning and
22 coordination fails to establish actual local response capability. However, Appellant fails to
23 cite any statute or regulation that requires NDEP to establish that the fire department
24 has the personnel, training, protective equipment or other resources necessary to
25 respond. Moreover, there is nothing in NRS or NAC that requires NDEP to do such a
26 task. Furthermore, the permit requirement to coordinate with local responders is an
27 administrative requirement and the actual requirements for an emergency response plan
28 fall outside of Chapter 444 of the NRS and Chapter 444 of the NAC.

27 ///

28 ///

1 MediWaste's application provides an emergency action plan, fire-suppression
2 provisions and 24-hour hazardous material response provisions. *See* Solid Waste Permit
3 Application **Revised April 2026** attached as **Exhibit 6** at NDEP 175 and 177. Further,
4 NDEP added as a condition to the permit that MediWaste must share all emergency
5 plans, and any updates to those plans, with the local fire department and first
6 responders. *Id.* NDEP at 177. Additionally, MediWaste must report any noncompliance,
7 imminent or existing hazard from the release of waste or hazardous constituents, any fire
8 or explosion at the facility, or any condition that may endanger human health or the
9 environment to NDEP. *Id.* at NDEP 178.

10 The Appellant further argues that NDEP's evaluation should address whether the
11 medical response pathway necessary for a serious facility emergency is complete and
12 available. Again, nowhere in NRS or NAC is this a requirement prior to issuing a solid
13 waste management facility permit. Appellants' arguments are misguided and outside the
14 scope of NDEP's role in this matter.

15 **3. How Natural Gas Will Be Supplied to The Facility is Outside**
16 **the Scope of NDEP's Role in the Permitting Process**

17 Appellant A.J. Brown further contends the permit was issued without establishing
18 how the natural gas required by the facility would be supplied. Again, supply logistics is
19 outside the scope of NDEP's role in this matter. Further, to address Appellants' concern
20 regarding the review of any substitute fuel proposed by MediWaste, per NAC 444.6435, a
21 proposal to modify the fuel type would be subject to public notice and review.

22 **4. NDEP's Permitting Process and Nye County's Conditional Use**
23 **Permit Approvals are Independent Processes**

24 Appellant A.J. Brown continues in his Opening Brief to allege NDEP continued to
25 rely on the April 10, 2024, Nye County Conditional Use Permit after the project had
26 changed significantly. The facility is zoned within a 4.70-acre parcel that is zoned for
27 heavy industrial use. On April 10, 2024, the Pahrump Regional Planning Commission
28 approved a Conditional Use Permit ("CUP") for MediWaste to construct and operate a

1 medical waste pyrolysis treatment facility. Whether or not the disposal processes changed
2 after the CUP was granted, does not change MediWaste's status as a medical waste
3 treatment facility, and as such was granted a CUP by the Pahrump Regional Planning
4 Commission. Further, NDEP's permitting under Chapter 444 and the County's CUP
5 process are independent processes and do not require advisement, consultation, or
6 cooperation. NDEP's permit is based solely on the application received and not what is
7 approved at the local level. This appears to be another misrepresentation of NDEP's role
8 in this permitting process.

9 **5. NDEP Complied with All Public Noticing Statutes and**
10 **Regulations in the Issuance of this Permit**

11 Ground Eight of Appellant A.J. Brown's Opening Brief alleges the record does not
12 establish which application was open to public review or whether the application
13 incorporated into Permit SW1900REV00 was available to the public.

14 NDEP issued all public notices in compliance with NAC 444.6415. *See* NDEP's
15 Public Notice – Request for Comment attached as **Exhibit 8** and NDEP's Notice of Public
16 Hearing attached as **Exhibit 9**. The Public Notice includes a link to NDEP's website as
17 well as the OnBase website where all relevant documents are stored. *Id.* Any member of
18 the public can easily access both websites and review the relevant documentation.
19 Further, all documents on the OnBase website are in chronological order, thereby a
20 viewer can easily discern the timeframe and what documents are current. Additionally,
21 the Public Notice includes contact information for the Bureau of Sustainable Materials
22 Management Permitting Branch should additional information be needed. *Id.* Appellant
23 A.J. Brown, as well as all Appellants, had the opportunity to contact the Bureau to seek
24 more information or ask questions. Thus, NDEP complied with the public noticing laws
25 when issuing the Permit.

26 ///

27 ///

28 ///

1 **6. MediWaste's Permit Application Section 3.1 Regarding Waste**
2 **Storage and Handling Complies with all Applicable Statutes**
3 **and Regulations**

4 Ground Nine of Appellant A.J. Brown's Opening Brief concerns pathological
5 waste, putrescible waste and non-refrigerated storage. He specifically alleges there
6 is an unresolved operational distinction between pathological waste and putrescible
7 waste and nothing in the regulations establishes that pathological waste is
8 categorically nonputrescible.

9 NAC 444.608 defines putrescible waste as "capable of being decomposed by
10 microorganisms with sufficient rapidity as to cause nuisances from odors and gases." Per
11 NAC 444.589, the definition of regulated medical waste enumerates that "human body
12 parts, organs, and tissues as medical waste.³ This enumeration removes "human body
13 parts, organs, and tissues" out of the putrescible category and into the regulated medical
14 waste category which is an allowable waste to be processed at the facility. Further, there
15 are no federal guidelines on storage time or refrigeration. Other state regulations for
16 storage time appear to range from 7 to 90 days. NDEP chose a conservative approach at
17 15 days.

18 **7. NDEP Permit Issuance Complies with Applicable Statutes**
19 **and Regulations**

20 The Appellant goes on to argue that the Permit does not establish a maximum
21 generation to treatment age for medical and pathological waste. The Appellant is correct.
22 Permit SW1900REV00 sets forth the requirements and restrictions that allow MediWaste
23 to conduct solid waste management facility activities on their property in Pahrump,
24 Nevada. The Permit also prohibits several materials from being accepted at the facility,
25 including putrescible waste. *See* Solid Waste Management Facility Permit August 2026
26 attached as **Exhibit 7**, NDEP at 422. However, the Permit does not regulate what
27 happens outside of the gates of the MediWaste facility, nor does NDEP have any

28 ³ Per NAC 444.589, the term "Medical Waste" has the meaning ascribed to in
49 C.F.R. Part 173, Appendix G – "Definitions of Regulated Medical Waste", as that
Appendix existed on November 8, 1993.

1 statutory authority to do so regarding permitting solid waste management facilities.
2 Specifically, NDEP is not statutorily or regulatorily required to source and explicitly list a
3 disposal site for the generated ash or unprocessed medical waste. All permitted disposal
4 facilities have the authority to prohibit or reject any waste that comes to the facility at
5 their discretion, even if the facility is permitted to take the subject waste type. Further,
6 pursuant to NAC 444.664, the generator is responsible for the collection of solid waste
7 and the person transporting the solid waste is responsible for transportation logistics.
8 Thus, the Permit complies with NRS and NAC requirements.

9 **8. NDEP Approved MediWaste's Permit Which Includes the**
10 **Handling, Storage, Characterization, and Disposal of**
11 **Hydrated Ash**

12 The next argument from Appellant contends that the classification and disposal
13 pathway for MediWaste's outgoing residue was not established prior to the permit
14 issuance. However, this is incorrect. The Permit sets forth the requirements to handle
15 and characterize the hydrated ash including the limitations on how much hydrated ash
16 may be on the site. For example, Sections 4.3 of the Permit covers the handling and
17 storage of the hydrated ash. *See* Solid Waste Permit Application **Revised April 2026**
18 attached as **Exhibit 6**, at NDEP 173-175. Section 4.3 indicates that samples of the
19 accumulated hydrated ash will be collected for characterization and disposal. *Id.*
20 Sampling will be done to characterize the hydrated ash for disposal. *Id.* The hydrated ash
21 will be put into covered trailers and moved to a storage area pending characterization. *Id.*
22 Per Section 4.4 of the Permit, the hydrated ash samples will be analyzed for toxicity using
23 the Resource Conservation and Recovery Act Hazardous Waste Test Methods Toxicity
24 Characteristic Leaching Procedure by Method SW-846 1311. *Id.* Further, EPA Method
25 8290A will be used to test dioxins and furans. *Id.* In addition, samples will be analyzed
26 for the hazardous characteristics of ignitability, corrosivity, and reactivity. *Id.* Section 5.1
27 of the Permit sets forth that MediWaste will validate that the selected disposal facility
28 has the appropriate permits and approvals to accept the waste. *Id.* at NDEP 175. And
Section 5.2 provides that in the unlikely event the hydrated ash is determined to be

1 hazardous waste, the ash would be disposed of at a permitted hazardous waste disposal
2 facility. *Id.* Contrary to the Appellant's allegation, the Permit sets forth a complete
3 characterization and disposal pathway for the hydrated ash. Again, NDEP is not
4 statutorily or regulatorily required to source and explicitly list a disposal site for the
5 generated ash or unprocessed medical waste.

6 **9. NDEP Lawfully Permitted Version 6 of the Permit Application**

7 The Appellant further alleges that the final permitted operation differs from the
8 resource recovery project earlier in the record and the record fails to establish what
9 prevents direct disposal of incoming medical waste if the process is not used. Further, the
10 Appellant argues that NDEP should not be able to permit a substantially changed
11 operation without consulting with Nye County. The Appellant is correct that the final
12 permitted operation differs from the initial proposed project. The initial permit
13 application submitted in May of 2024 is different from the Permit that was issued. Key
14 differences include the initial permit application focused on the creation of dimethyl ether
15 (DME) and bio-oil as a revenue source from the pyrolysis process. However, MediWaste
16 determined this process was unattainable and engaged a new consultant. The new
17 consultant focused on pyrolysis for the process of medical waste resulting in hydrated ash
18 and the permit application was revised. NDEP performed all required reviews of the
19 revised permit application and determined all statutory and regulatory requirements
20 were met.

21 Further, as previously established, whether or not the disposal processes changed
22 after the CUP was granted, does not change MediWaste's status as a medical waste
23 treatment facility, and as such was granted a CUP by the Pahrump Regional Planning
24 Commission. NDEP does not have a duty to consult with Nye County regarding the
25 change in operations at the MediWaste facility. Further, as previously established NDEP
26 is not statutorily or regulatorily required to source and explicitly list a disposal site for
27 the generated ash or unprocessed medical waste. All permitted disposal facilities have the

28 ///

1 authority to prohibit or reject any waste that comes to the facility at their discretion, even
2 if the facility is permitted to take the subject waste type.

3 **10. NDEP Complied With All Statutory and Regulatory Requirements**
4 **When Issuing the Permit**

5 Appellant Sharon Cruise filed an Opening Brief alleging NDEP issued the Permit
6 in direct violation of their responsibility to maintain a safe and healthy environment for
7 the residents of Pahrump, Nevada, based on NRS 459.565. However, NRS 459.565 does
8 not apply to the Permit at issue. The Permit was issued by NDEP based on Chapter 444
9 of the NRS and Chapter 444 of the NAC, which contain provisions setting forth the
10 requirements for Solid Waste Management Facilities. Nevertheless, no unmitigated
11 health hazards, public nuisances or impairment of the environment were identified
12 during the permitting process.

13 Appellant Cruise goes on to allege that Pahrump is in eminent threat of
14 contamination to Basin 162 the only source of water for Pahrump residents. However, the
15 request and use of water from Basin 162 is outside the scope of this permitting action.
16 Further, the Permit contains several provisions that are protective of the ground water
17 and stormwater. The Permit requires all materials to be handled in approved packaging
18 and containers, and all handling will be conducted inside the buildings without floor
19 drains. *See* Solid Waste Permit Application **Revised April 2026** attached as **Exhibit 6**,
20 SOC G.2. Any spills must be cleaned up and reported within 24 hours and the facility is
21 required to maintain a Spill Prevention, Control and Countermeasure Plan and
22 Stormwater Prevention Plan. Furthermore, NAC 444.672(4)(e) prohibits process water
23 from being discharged to the sanitary sewer because the receiving wastewater treatment
24 plant is potentially not designed to accept industrial discharges. Thus, this allegation is
25 without merit.

26 Last Appellant Cruise argues that the fire department doesn't have the capacity to
27 handle a hazardous waste spill. As previously established, the requirement to provide an
28 emergency action plan ("EAP") to local authorities is only administrative in nature.

1 NDEP is not statutorily or regulatorily required to evaluate an EAP or to ensure
2 adequate capacity to respond as that is a function of local authorities and the
3 Occupational Safety and Health Administration.

4 **C. NDEP's Response to Form #3 Claims**

5 Appellants Cheryl Varkalis and Raymond Varkalis submitted a joint Form #3
6 requesting an appeal hearing in front of the SEC. The form requires a brief and concise
7 statement of the facts which provide the basis of appeal. However, these Appellants did
8 not file Opening Briefs. Therefore, this section will respond briefly to the allegations
9 contained in the Form #3. Please note, many of the allegations are the same or
10 substantially similar to those of Appellant A.J. Brown and Appellant Sharon Cruise's
11 allegations; thus, those allegations have already been addressed in this brief and will not
12 be addressed here.

13 Contrary, to the Varkalis' allegations, NDEP followed the requirements found in
14 Chapter 444 of the NRS and Chapter 444 of the NAC for the processing and issuing of
15 this Solid Waste Management Facility Permit. During this time, no unmitigated health
16 hazards, public nuisances or impairment of the environment were identified. The Permit
17 does not convey a property right but rather authorizes specific activity. Further,
18 permitting is not required to identify a hydrated ash disposal facility under Chapter 444
19 of NRS or NAC.

20 NDEP determined that the proposed process is pyrolysis, not incineration, for the
21 purposes of Chapter 444 of NRS and NAC. Pyrolysis occurs in the absence or near
22 absence of oxygen, and it is thus distinct from combustion/incineration, which can take
23 place only if sufficient oxygen is present. On August 2, 2026, the permit application was
24 made available for review, this also was the start of the public comment period. A final
25 version of the application is incorporated into the permit based on the comments received
26 during the public comment and notice period. Further, Chapter 444 of NRS and NAC do
27 not require engineer stamped plans.

28 ///

1 **V. CONCLUSION**

2 For these reasons, the Permit was issued in compliance with all applicable statutes
3 and regulations. The record provides substantial evidence supporting NDEP's decision to
4 issue the Permit. Appellants can't meet their high burden of demonstrating that NDEP's
5 issuance of the permit was in violation of a constitutional or statutory provision; was in
6 excess of NDEP's statutory authority; was made upon unlawful procedure; was affected
7 by other error of law; was clearly erroneous in view of the evidence on the whole record;
8 or was arbitrary, capricious, or an abuse of discretion. As such, NDEP requests the SEC
9 affirm the issuance of Solid Waste Management Facility Permit ID SW1900REV00.

10 DATED this 22nd day of September 2026.

11 AARON D. FORD
12 Attorney General

13 By: /s/ Katie S. Armstrong
14 KATIE S. ARMSTRONG (Bar No. 8571)
15 Senior Deputy Attorney General
16 Office of the Nevada Attorney General
17 100 North Carson Street
Carson City, Nevada 89701
(775) 684-1224 (phone)
(775) 684-1108 (fax)
karmstrong@ag.nv.gov

18 *Attorneys for Respondent*
19 *Nevada Division of Environmental Protection*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State
3 of Nevada, and that on this 22nd day of September 2026, I served the foregoing
4 ***NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S RESPONSE BRIEF***
5 via electronic mail, at Carson City, Nevada, addressed to the following:

6 A.J. Brown Appellant
3216 Mount Charleston Dr.
7 Pahrump, Nevada 89048-1050
V540501@gmail.com
8 Deaf pls. use Email: (760) 559-5620

9 Sharon Cruise Appellant
5190 East San Palo Drive
10 Pahrump, Nevada 89061
Scruise245@att.net
11

12 Cheryl and Raymond Varkalis Appellants
1560 Indole Street
13 Pahrump, Nevada 89048
Happyhappyhappy997@gmail.com
14

15 Sihomara Graves, Esq. Attorneys for Intervenor
Kaempfer Crowell MediWaste Disposal LLC
16 50 West Liberty Street, Suite 1100
Reno, Nevada 89501
17 sgraves@kcnvlaw.com

18 Amber Konakis, Esq. Attorneys for Intervenor
Kaempfer Crowell MediWaste Disposal LLC
19 50 West Liberty Street, Suite 1100
Reno, Nevada 89501
20 akonakis@kcnvlaw.com
21
22

23 /s/ M. Garcia
24 M. Garcia, AG Legal Secretary
25
26
27
28