



# FINAL MINUTES

## Regulatory Meeting

 TIME	 LOCATION
December 17, 2021 10:00 a.m.	Richard H. Bryan Building 901 S. Stewart St. Carson City, NV

### SEC members present:

Chairman Tom Porta  
Vice Chairman Jason King  
Commissioner Kacey KC  
Commissioner Jennifer Ott  
Commissioner Tony Wasley  
Commissioner Michael Visher  
Commissioner Jocelyn Torres  
Commissioner Mark Turner  
Commissioner Tom Smith  
Commissioner Adam Sullivan

### SEC staff present:

Sheryl Fontaine, Executive Secretary  
Jessica Higday, Recording Secretary

### Nevada Attorney General's Office staff present

Asheesh Bhalla  
Dan Nubel

### Nevada Division of Environmental Protection staff present:

Greg Lovato  
Danilo Dragoni  
Jeffrey Kinder  
Kristen Burke  
Sig Jaunarajs  
Frederick Perdomo

### DMV staff present

Steven Filler  
Glenn Smith  
Ivie Hatt

## TRANSCRIPT

**Jessica Higday:** testing, testing.

**Jessica Higday:** Testing, testing 1, 2, 3. Testing, testing. It seems to be working well. It stopped and then--

**Sherly Fontaine:** Yeah.

**Tom Porta:** I call--call to order this meeting of Nevada State Environmental Commission on--let's see it's a few minutes past 10 o'clock on December 17th here. Sheryl, would you please call the roll.

**Jessica Higday:** Thank you, Chairman Porta. Good morning, members of the commission. I'll proceed with roll call. Chairman Porta?

**Tom Porta:** Here.

**Jessica Higday:** Vice Chair Jason King?

**Jason King:** Here.

**Jessica Higday:** Commissioner Kacey KC?

**Sheryl Fontaine:** I don't think [inaudible] she's there. [Inaudible] she's there.

**Kacey KC:** Here.

**Jessica Higday:** [Inaudible] Commissioner, good morning. Commissioner Jennifer Ott.

**Jessica Higday:** [Inaudible].

**Jessica Higday:** Commissioner Wasley?

**Tony Wasley:** Here.

**Jessica Higday:** Commissioner Visher?

**Michael Visher:** Here.

**Jessica Higday:** Commissioner Landreth?

**Kathryn Landreth:** Here.

**Jessica Higday:** Commissioner Sullivan? Commissioner Torres?

**Jocelyn Torres:** Here.

**Jessica Higday:** Commissioner Turner?

**Mark Turner:** Here.

**Jessica Higday:** Commissioner Smith?

**Tom Smith:** Here.

**Jessica Higday:** Counsel from the AG's Office, Asheesh Bhalla. He's here. He is here.

**Female Speaker:** Okay.

**Sheryl Fontaine:** Sorry and with that we have a quorum.

**Tom Porta:** Okay, very good. Thank you. Well, some of you may heard, we have some new members of the Commission. I first like to welcome our member from the State Board and Health, which hasn't had a person on this Commission for some time. Commissioner Smith, can you hear me?

**Tom Smith:** Yes, I can. Thank you.

**Tom Porta:** Yeah, why don't you give us a little background about yourself?

**Tom Smith:** Sure, sure. Charles Smith, I actually got my [inaudible]. I started my second term with the Board of Health, it's been very interesting and very productive participation in that. As far as my background--my background is concerned, I'm a Project Manager for a special homebuilder here in Las Vegas, Nevada and prior to that I worked with construction companies for commercial construction and then architecture. Also, my background is architecture and construction and I've been doing that all my life. I've been in Nevada for over 15 years, and I look forward to being a part of this Commission.

**Tom Porta:** Very good, thank you. And did you say you heard it go by Tom was it--what was your--

**Tom Smith:** Yes, I go by Tom.

**Tom Porta:** Okay. Well, I preferred to go by Tom as well, so it's good. Alright, thank you and welcome. And also--

**Tom Smith:** Thank you.

**Tom Porta:** --new member to our Commission, representing us from the Attorney General's Office is Asheesh Bhalla and I like to welcome him and ask him to say a few words as well.

**Asheesh Bhalla:** Good morning. Thank you, Mr. Chairman. Thank you, Commissioners. It's a pleasure to be here. As the Chairman noted, I'm from the AG's Office, Deputy Attorney General, the Division of Force of Government, and I serve as Counsel for a number of boards and commissions; but I'm very excited about this new assignment and to be here with everybody.

**Tom Porta:** Thank you Asheesh, and welcome. Alright, moving down through our agenda. Item number 2 is public comments. This is time for members of the public and those who phoned in to provide comments to the Commission, preferably on items that are not listed on the agenda at this time. If you have a comment regarding one of the agenda items, I ask that you hold your comment until that time when public comment is asked for on that agenda item, speak. But, if anyone in the public now has an item or issue, they'd like to bring before the Commission during this public comment, I'll open it up at this time. Is anybody on the phone?

**Sheryl Fontaine:** It looks like Adam Sullivan, yes, it is Adam Sullivan.

**Tom Porta:** Okay. Alright, seeing no public comment at this time, I will close the public comment period and welcome Adam. Can you hear me?

**Adam Sullivan:** --I'm attending by audio, and I will be in attendance in person in about 45 minutes.

**Tom Porta:** Okay. Alright, moving on to the approval of those September 1st minutes. Before we get into that, it's come to my attention that the Division had some corrections or issues they would like to make of those minutes and I think we could do that at this time, before we move forward with the approval process, sounds great.

**Sheryl Fontaine:** They were mostly typographical edits.

**Tom Porta:** Okay.

**Sheryl Fontaine:** So, we're okay to approve them as--as long as they will be able to around then.

**Tom Porta:** Okay. Commissioners having comments or discussion regarding the September 20 or September 1st, 2021 minutes? Pick them at this time.

**Jocelyn Torres:** I had one, this is Commissioner Torres. Is the edit--the changing of the name under the NDEP staff present? I saw that there are few names under that are not staff, is that the change?

**Sheryl Fontaine:** That was not the change, no. We can make that change as well.

**Jocelyn Torres:** I think it was for Kristen Averyt into staff. I think we have her as speaker but then also as staff. I think that's a duplicate.

**Tom Porta:** Thank you, Jocelyn, good catch.

**Jocelyn Torres:** Yes.

**Tom Porta:** Any other comments regarding September 1st minutes from the commissioners? Okay, hearing none, I'll call for a motion.

**Mark Turner:** Mr. Chairman, I move to approve the minutes around the September meeting with the corrections noted.

**Jason King:** I'll second.

**Tom Porta:** Motion has been moved and seconded. All in favor?

**Male/Female Speakers:** Aye.

**Tom Porta:** Any opposed? Very good. The minutes are approved for September 1st, 2021. Okay, moving on to agenda item number 4, consideration of remand in the matter of Tahoe Western Asphalt, LLC, NOAV Nos. 2783, 2784, and 2786. This is an action item for possible action regarding a penalty assessment for those NOAVs that was conducted last year for--I guess this year. And this Commission did approve the Division's recommendations; however, the company has since filed for judicial review. They went before the court and the court has basically remanded that decision back to us for a procedural reason. So, my plan is today, while this is not an appeal hearing, I would like to have opening statements from both sides, from both the Division and the TWA, or their representative. We will have a presentation of evidence by both sides, if they wish to do that, and any side will get a chance to respond. There's--after the response, if there's a rebuttal by either side, they will be given a chance to do that. Before we bring that matter back to the Commission after this presentation, after public comments, if there's no public comment, or if there is we'll take it and then we'll bring back to the Commission for discussion and approval, disapproval, or modification as we see fit. And with that, I think we will begin with the opening statement, probably starting with the Division.

**Dan Nubel:** Good morning, everyone. Can you hear me, okay?

**Tom Porta:** Yes, we can.

**Dan Nubel:** Okay, this is Dan Nubel, I'm a Senior Deputy Attorney General, representing the Division. So, the purpose of this hearing is to correct a minor procedural defect relating to the SEC's recently issued penalties against Tahoe Western Asphalt which I'll refer to as TWA. On December 9th, 2020, the SEC set penalties against TWA relating to several air quality permit violations. The total penalty amount was set at \$50,020.00. That was reduced from the amount recommended by NDEP of approximately \$120,000.00 or so. TWA appealed the SEC's decision on the basis that it failed to contain a formal findings of fact and conclusions of law as required under NRS 233B.125. The court agreed that the SEC's decision was missing the required findings of fact and conclusions of law, and so, it remanded the case back to the SEC for want of the issue. Notably, the court's decision was related only to those procedural defects. It did not address the validity of the penalties, nor did it make findings on the merits of the dispute. The SEC has already reached a decision on this matter and the remand hearing here

should be limited to articulating the SEC's reasoning into formal findings of facts and conclusion law. As such, NOAV attached to the briefing file here, a proposed findings of the fact and conclusions of law and decision which it believes expresses the SEC's rationale for its decision based on the comments that took place during that hearing. Ultimately, the NDEP is requesting that a motion take place which reaffirms the penalty amounts that were issued at that December 9th, 2020 hearing and further, adopts the findings of fact and conclusions of law and decision that was attached to NDEP's opening brief in this matter. Thank you.

**Tom Porta:** Thank you, Dan. Do we have a representative from TWA? Sheryl, did you see anybody phone in or--

**Sheryl Fontaine:** No.

**Tom Porta:** --them? Alright, interesting. Alright. Alright, seeing that no representative is available from TWA or is here, I'll move on, uh, Dan--Dan is there any new information that you would like to present on behalf of the Division in regard to this agenda item?

**Dan Nubel:** Um, thank you, Mr. Chairman, no, not at this time. The NDEP is of the opinion, which I think is supported by the order that was issued by the district court, that the SEC already gave a lot of thought into the penalties that were issued here. And, in order to remedy the problem that was pointed out by the district court, we would just request the finding of facts and conclusion of law decision be issued. It was essentially a jurisdictional problem for the district court. They couldn't make a decision as to the merits of the penalties because they didn't have the findings of fact that's required under 233B. So, I think by adopting the findings of fact and conclusions of law that was attached to our brief, and also reaffirming the amount of the penalty that was set at the December 9th hearing, I think that would cure any deficiencies with the previous decision and would allow the district court to hear an appeal if TWA decides to continue with the process. Thank you.

**Tom Porta:** Thank you. Well, seeing that there's no representative from TWA present, uh, I will next, uh, ask for public comment on the matter. If anybody on the phone or here in person has any comment regarding this matter, please step forward or speak up now. Alright, seeing that there's no comment, I'll close the public comment period on this agenda item and bring it back to the Commission for discussion. I believe Asheesh has laid out in our exhibit under this agenda item, specifically on page 6, 7, just a minute.

**Asheesh Bhalla:** Mr. Chairman?

**Tom Porta:** Yes? Go ahead.

**Asheesh Bhalla [ph]:** This is Asheesh [ph] here if I may. Just for the procedural stage. I would advise that we just take limited testimony in the service of the process if possible to ensure that TWA was properly served, and then I would suggest that they vote on the findings of fact and conclusions of law of as provided in the exhibit, you can either do

those separately or together as you see fit, but I think that we should do one, and vote on one service of process to ensure that for the record; and then two, vote on finding fact, and to the law as you see appropriate.

**Tom Porta:** Okay, very good. So, with regard to service of process, I guess can the Division or affirm, or Sheryl can affirm that the documents, uh, that were sent were received?

**Sheryl Fontaine:** Documents that--

**Tom Porta:** When, uh, I guess when--maybe fair question for the Division when the NOAVs went out that they were received by the TWA.

**Sheryl Fontaine:** The original NOAVs.

**Daniel Nubel:** Yes.

**Tom Porta:** Okay and--

**Daniel Nubel:** So, are we asking about the procedure for notification for this hearing that's taking place today, or the original NOAV's? the hearing today?

**Tom Porta:** Yeah, the today and then I just want to ask too the notices were because I believe he sends the certified mail to the—the suspected company that's in violation. And I just want confirmation that those notices were sent; and then on today's hearing, um, especially since we have not had a representative from TWA here that, uh, this hearing was properly noticed.

**Dan Nubel:** Thank you--

**Dan Nubel:** Sure, and I can confirm, you know, it's in the, uh, the record based on the exhibits that we showed that TWA received notification of the original NOAVs. The meeting took place. They decided not to appeal them, um, so those were all properly noticed. There was never any dispute about whether they received them or not.

**Tom Porta:** Okay.

**Dan Nubel:** For the hearing today, I will need to look back in my record a little bit, but I recall that the SEC's Secretary had sent out a notification to vote on these. TWA was clearly aware of the hearing and the briefing schedule because they submitted an opening brief in this matter. So, I believe, you know, there was proper notification under the rules for that, and they-- for whatever reason decided not to.

**Tom Porta:** Alright, great.

**Greg Lovato:** I'll just add Commissioner Porta, if you look at the initial brief from TWA's attorney from Hanna--Lanak & Hanna, it's, uh, from their attorney, Thomas Padian.

**Tom Porta:** Okay.

**Greg Lovato:** If you look at his introduction, he notes the topic of discussion at the December 17th, 10:00 a.m. SEC meeting. So, in submitting, it's just clear they were aware of today's hearing.

**Tom Porta:** Okay. Great. And again Sheryl, this meeting was properly noticed and--very good, very good. I should have stated that at the beginning meeting, I forgot, I'm sorry. Should that suffice, uh, Asheesh for covering the notice?

**Asheesh Bhalla [ph]:** Yes, Mr. Chairman.

**Tom Porta:** Okay, very good, very good. Alright, so moving forward, back to the Commission here, as I pointed out earlier on Exhibit 1, Asheesh's nicely laid out, uh, language that we can use on, uh, on making these findings of facts. There's actually three areas that we need to, uh, have a motion on and move forward with one, the findings of fact. The second would be, uh, that the regulations that were violated and/or statutes, and then the last item we would need to consider is reaffirming or modifying or changing the penalty amount. But this time, I'll bring it back to the Commission for discussion before we get into those motions. Does any Commissioner have any objection, item, issues concerning TWA and then?

**Mark Turner:** Mr. Chairman, I have--I have one comment. Throughout the lengthy process of evaluating this TWA matter. I have consistently abstained from voting because companies that I'm affiliated with have done business with TWA, and will continue to do that as a way continuity and consistency throughout the process.

**Tom Porta:** Okay, Mark, so noted. Thank you.

**Jason King:** Chairman Porta, um, I wasn't aware that our new Deputy Attorney General is it Asheesh [ph]?

**Tom Porta:** Asheesh Bhalla, yes.

**Jason King:** Had drafted that Exhibit 1, that is the case?

**Tom Porta:** No, that was Dan.

**Male Speaker:** Commissioner.

**Male Speaker:** It was Dan?

**Tom Porta:** It is Dan, sorry about that.



**Male Speaker:** So before we move forward and vote on this as--since you are our legal representation for this board and I know you're new but it sounds like you've got a lot of great experience, I mean, I would want to know from you, when you look at Judge Russell's remand and you read that, do you believe that just what is in Exhibit 1 in terms of the findings of fact and conclusions of law, do you think that satisfies Judge Russell's order because we certainly want it defensible and, um, is there anything else that we should be looking at? And obviously TWA's counselors brought up other issues but you think that what is in Exhibit 1 I guess and that it satisfies that remand or--

**Asheesh Bhalla:** Thank you, Commissioner, yes. I do believe that what is here laid out and the exhibit as it is laid out would satisfy the court's remand order, to be frank I would have preferred TWA's counsel to be here to state why they had accepted the settlement before and then petitioned for judicial review afterwards. I think that would have provided some clarity on the record. But, what we have here, showing that they were properly served. We are permitted to proceed with the findings of the fact as presented, I think the format lays it out very clearly for as mentioned before, you know, this is really more of a Dana procedural issue where they didn't really feel the findings of fact were adequately recorded into the record. And so, I think this format, um, and taking a vote on the findings of fact, and then the conclusions of law, and then the discipline as imposed, um, separately with three clear motions. Will lay out in an orderly fashion for the court, what has been done here today and along with the written record should be more than sufficient to, uh, uphold the Commission's decision. And I'm open for any other questions you have sir.

**Jason King:** Commissioner King again and again I know you're new to this court. Again, TWA's counsel brings up a lot of other issues and they're not here today which is surprising me, but in any case, um, they brought up other issues. Do you view these other issues that he has brought in his brief as anything that we can even talk about again, look at again or do you think that he and Russell's remand is very specific to the finding of facts, conclusions of law and that's it?

**Asheesh Bhalla:** Great question, sir. The Commission has the full authority to discuss and deliberate the issue's that were put forth by TWA's counsel. If you see that they have merit or if you see there's any issues, um, that may, uh, weigh against the findings of fact that had been alleged in the Division's complaint. And if any of the Commissioners feel that is the case, I would urge the Commission to have that discussion and deliberation at this time. They have submitted that brief, so--but I--I would have expected them to also come and defend that position as well. So without a full hearing, there is no requirement that we hear those argument, but the Commission is well within its authority to consider those other issues, um, when considering whether they, you know, want to accept the findings of fact as alleged in the complaint because the document and the conversation here today are the record that would go back to the court, um, provide any sort of status update on compliance with the remand agreement. Thank you.

**Tom Porta:** So, Jason, you feel we should venture into that realm with what was written, uh, in the response by the judge remanding this back?

**Jason King:** I struggled with that. I mean we've hashed this over now several times and some of the new questions--well, some of the new questions that I have were questions that had been asked in the past too, just seeing it fresh again like why did certain things happened but--

**Tom Porta:** I feel kind of the same way with the--I would--I think if the representative was here, to give those answers, but I'm quite shocked that they're not here, or don't have representation. Um, I don't know, you know, what the reasoning is behind that and so we're left, you know, kind of hanging here a little bit with this issue. My personal view is that if they're not here to represent themselves, then I think we should just move forward with the procedural aspects and getting it correct and moving forward. But, if other commissioners have any other ideas or suggestions of how we proceed, that's fine, I'm wide open, so. Anyone else would like to comment on this, any commissioners about how we proceed?

**Kacey KC:** This is Kacey-- Commissioner KC here. I think I feel like the only way is to proceed without them here, we have talked to them about those findings. There is notes on file for the record. Um, some of these issues, not all of these issues, without them here today, I think all--we should look at is, um, the remand and what we need to do procedurally in response to that without having the other side.

**Tom Porta:** Thank you, Kacey. Any--

**Kathryn Landreth:** This is Kathryn.

**Tom Porta:** Go ahead, Kathryn.

**Kathryn Landreth:** Kathryn Landreth. I agree with what Kacey just said. I am puzzled by the fact that is the--I don't know if this what Jason has alluded to but the fact that there's an allegation, I think that they felt like they were blindsided, that they have had--they gave a notice of the severity of the penalties they might face, uh, and that could be--because we're kind of concern if--if it--if it's accurate and they did not have any idea they were facing pretty hefty fine. But, having said that, I think we should follow the judicial process if what we've been asked to do is to create findings of fact and conclusions of law for the judge to review.

**Tom Porta:** Thank you, Kathryn.

**Kathryn Landreth:** And I suppose I'm guessing those of you who practice administrative law can probably answer this with the allegations that TWA brought up; to come back in a hearing before the judge once he has some findings of fact and conclusions of law to review.

**Tom Porta:** Right. Any other commissioner--

**Dan Nubel:** Can I just make one note for the record Mr. Chairman?

**Tom Porta:** Oh yeah, go ahead, Dan.

**Dan Nubel:** Okay, thank you. And I would--I would just note that a lot of the allegations that are brought up in the--in the briefing are related to the facts, the underlying facts of the NOAVs that were issued. And those, as was discussed in the previous meeting on December 9th, 2020, um, they didn't appeal those. The appeal time passed for those underlying facts. And if you look at the minutes for the previous hearing, there are targeted states that the door was shut to address the merits of the violation. So, even if they were here to go into the underlying facts, I would argue that those are already--those already have been determined and really the--here it should be limited to just addressing the amount of the penalties.

**Jason King:** Commissioner Porter, Commissioner Landreth articulated my point much better than I did. That is exactly my concern is this allegation that they--that they thought that they just came into compliance. There wasn't going to be a penalty. All of a sudden allegedly they get this, you know, notice that's it's going in front of the SEC for 100 and--whatever thousand dollars it was and that was the first time they heard it. And my brain just goes that if they would have known that and maybe they did and if somebody can clarify, that would be great. But, um--then they probably would have taken the appeal is my guess and if they would have taken the appeal and that they were to come forward and finding all information, perhaps that penalty would have reduced, maybe not--maybe not at all but it may have been reduced, um, and we would be talking about a different situation today.

**Tom Porta:** Well, let me add here. I think, um, and maybe that was the case, um, but this Commission has given a lot of deference to the Division and they changed some of their process as of how they handled these enforcement cases such that we don't arrive at these types of confusion situation when a--when a company comes in the Division to talk about their violations that they know, uh, was--is going to happen, if they have no evidence to show that they weren't guilty of the violation that's been alleged. So, I guess with that, Greg, you have something to add?

**Greg Lovato:** Thanks, Commissioner Porta. Again, Greg Lovato, NDEP administrator. Yes, I'll just point out a couple of things for the Commission to consider as you look at, you know, this allegation. One, this isn't the first time Tahoe Western Asphalt has come before the Commission. They should be familiar with the enforcement process and the--the time they reported to bring an appeal and you know, even though their counsel alleges, uh, that there was some kind of indication from the Division, that the enforcement penalties would go away, they provide no evidence of such. They provided nothing in writing afterwards saying hey, here's our understanding from our meeting that you have told us you will not pursue penalties. So, I feel like there's nothing really in the record that supports TWA being blindsided, um, and having the benefit of counsel throughout this

process as well. I just ask that the Commission consider, you know, those factors in, you know, weighing whether or not that allegation really is supported by any--anything in the record.

**Tom Porta:** And Greg before you go, on those previous violations with TWA, there was a penalty assessed, Commission approved it prior to this new one. Is that the case before us?

**Greg Lovato:** Oh, I'll refer to Danilo Dragoni on past violations from TWA.

**Danilo Dragoni:** Danilo Dragoni for the record. Yes, um, I don't remember the exact days, but previous violations were issued and--and penalties were assessed by the Commission well before the evaluation here we're discussing today and paid. And--and I believe so that--

**Tom Porta:** goes to the school district right? We don't know.

**Danilo Dragoni:** For that, I would defer to--that will be partially paid, yes.

**Tom Porta:** Okay, so they had--they had knowledge of this process, uh--

**Danilo Dragoni:** Yes.

**Tom Porta:** --agree with it and now we're here today again.

**Danilo Dragoni:** Okay.

**Jason King:** that helps a lot.

**Tom Porta:** Okay. Good, and like I said from the onset, you know, even though this wasn't an appeal hearing, uh, I opened this meeting or this agenda item and laid out the steps we were going go through to give their side a chance to come, to present the information, so we can have this discussion. But for whatever reason they're not here, um, so in my opinion we're kind of left with just dealing with the remand issue and correcting that matter and moving forward.

**Male Speaker:** I agree.

**Tom Porta:** Any other discussion from the Commission? Okay, hearing none, I'll entertain a motion--like I said we have three things we need to do. The first is a motion and vote on the findings of fact. The second would be a motion and vote on the violation of the regulation and the third item would be the penalty amount motion and vote. So, with that, I'll open it up for motion from the first issue which is the findings of a fact or finding of fact.

**Jason King:** Chairman Porta, it is a question, um, are we voting on whether or not we approve Exhibit 1, findings of fact, conclusions of law that the--that this Commission supports them--that Exhibit?

**Tom Porta:** Um, correct me if I'm wrong, Asheesh, but I think we need to articulate the findings of fact that were—have been laid out in the--in the, uh, exhibit specifically?

**Asheesh Bhalla:** Yes, Mr. Chairman. I--I would advise that we phrase it as, uh, that the findings of fact and the complaint, paragraph 1 through 4 or 1 through 5, have been proven, that there is a second to that for that finding of fact in paragraph 4, um, through 4 or one through three depending on, uh, how the Commission or which findings of fact is believed have actually been proven. Given the situation I think we could take all five of them together to vote.

**Tom Porta:** Okay, thank you. So again, I'll entertain a motion on the findings of fact from the Commission.

**Jason King:** Chairman Porta, I don't mean to be obtuse here.

**Tom Porta:** No, no.

**Jason King:** We're--are we discussing approval of this draft, findings of facts, conclusions of law, it seems Exhibit 1 has led--we vote then whether or not we want to adopt that as our position and our response to the remand order from judge for us.

**Tom Porta:** Yeah, I believe so with the reference, specific reference to, uh, paragraphs 1 through 5. We can either read those is my understanding or we can simply adopt them, restated and state that with findings of facts in paragraphs 1 through 5 of Exhibit --of Exhibit 1.

**Asheesh Bhalla:** And just for the Commission's background and clarification, these findings of fact were essentially the same language and facts that were in the original letter. They're just going to reformat it into a legal brief that way it's very easy for the Commission when review make the motions on finding a fact, conclusions of law and then for the court to review both the documentation and the motion that we'll make here. So, it is the same language as the underlying notice of violation.

**Tom Porta:** And you know, if you have any changes, there's going to be--I don't think we heard anything to change the findings of the facts, that's why it's in the exhibit and could've been changed.

**Jason King:** Yes, Chairman Porta. I would--I would move to approve findings of facts as written in Exhibit 1, um, number 1 through 5.

**Tom Porta:** Um, paragraphs 1 through 5.

**Jason King:** I'm sorry paragraphs 1 through 5.

**Tom Porta:** Okay, very good. There's been a motion on the findings of fact, paragraphs 1 through 5, Exhibit 1. Is there a second?

**Michael Visher:** I second.

**Tom Porta:** We have a second. Any discussion--any further discussion from the findings of fact here? Okay, seeing and hearing none, I'll ask for a vote. All those in favor?

**Male/Female Speakers:** Aye.

**Tom Porta:** Any opposed? Very good, hearing no opposition, the motion carries on the findings of facts. The next item we need to consider now is the conclusions of law. And, um, we'll need a motion on that and again, it is contained in Exhibit 1 and the paragraphs that are outlined there, 1 through 6 I believe.

**Jason King:** Mr. Chairman, I would move, uh, to approve conclusions of law found in Exhibit 1, paragraphs 1 through 6.

**Tom Porta:** Very good, it's been moved or motion on the conclusions of law, paragraphs 1 through 6, is there a second?

**Kathryn Landreth:** Mr. Chairman, I'll second it.

**Tom Porta:** Thank you. Any discussion? Hearing and seeing no discussions, I'll call for the vote. All those in favor on the conclusion of law?

**Male/Female Speakers:** Aye.

**Tom Porta:** Any opposed? Hearing no opposition, the motion carries on the conclusion of law. And the final item will be the penalty assessment amount. I'll entertain a motion for that. And Asheesh we can do that as a total, correct, the total amount of fine, we don't have to do each individual one?

**Asheesh Bhalla:** That's correct sir.

**Tom Porta:** Okay. And could someone restate what's the total of the violations from all the notices? Um, I forgot it was 50, sort of 50,020, is that right?

**Male Speaker:** Yeah.

**Female Speaker:** [Inaudible] like this.

**Female Speaker:** Yeah, yeah [inaudible].

**Tom Porta:** Is that correct? Good, okay. So, if someone want to make a motion, the total sum is \$50,020 for the violations.

**Jason King:** Mr. Chairman, I would move to approve penalties under notice of alleged violations 2783, 2784, and 2786. The sum total amount of \$50,000--\$50,020.

**Tom Porta:** Very good and move to accept the penalty at \$50,020 for the notice of alleged violations. Is there a second?

**Kathryn Landreth:** I'll second it, Mr. Chair, Kathryn Landreth.

**Tom Porta:** Thank you. Any discussion by the Commission? Hearing and seeing none, uh, motion carries on the penalty amount for notices of the alleged violations of 2784, 2786, 2783 for \$50,000--\$50,020. Alright, this agenda item is concluded, I--oh, I'm sorry. I'm getting ahead of myself. How about a vote, uh, for the penalty amount?

**Male/Female Speakers:** Aye.

**Tom Porta:** Any opposed?

**Kathryn Landreth:** Mr. Chairman, before we move on, this is Kathryn Landreth, uh, I just noticed my last name is misspelled on the proposed findings of fact.

**Tom Porta:** Oh.

**Kathryn Landreth:** Conclusions of law, on page 4, this is line 9 and 12 my last name is misspelled, so you might want to correct that.

**Tom Porta:** Okay.

**Kathryn Landreth:** So,

**Tom Porta:** Very, good. Thank you, Kathryn, so noted.

**Dan Nubel:** I'll just add my apology to that.

**Kathryn Landreth:** That's okay. Thanks again.

**Tom Porta:** Alright, so we, uh, voted on the penalty amount, I didn't hear any opposition on that, so I'll consider the penalty amount approved by this Commission. And again, before we move on, uh, this was a very different scenario, in all the years that I've been involved with the Commission. This is the first time somebody has filed for judicial review on a settlement agreement. So, in the--in moving forward, I've asked Sheryl and the Division to work together, and we get new violation before our Commission that we have this format, such that we don't get remand in the future in case there are appeals, uh, for judicial review what you just showed me. And I think we'll--we'll go with the similar format

when we actually have appeal case as well, that way we've not, um, run afoul with the procedural aspect and if those need to [inaudible]. So, they'll be working on that, so probably in the future when we see, uh, air violations come before us, we'll have to proceed in a similar manner. Yes?

**Male Speaker:** Chairman Porta, you're specifically talking about having findings of facts and conclusions of law?

**Tom Porta:** Yes. Yeah, I mean even though we heard really probably hundreds of these cases, and this is the first one to—that's been, uh, requested for judicial review, it'll just make it cleaner and the--in going forward and that we don't have those, uh, issues for. I'll recognize Commissioner Adam Sullivan has now joined us. Good morning.

**Adam Sullivan:** Good morning, and I have been in attendance by audio.

**Tom Porta:** Okay.

**Adam Sullivan:** Up to this point.

**Tom Porta:** Very good. Alright, moving on. The next agenda item, we have a petition for authorization, the consideration of request for authorization to perform additional services by Valvoline and, um, I guess I'll open this agenda item with the, each side will give us the presentation, um, I guess we have representatives from the DMV also here if we have questions as well. So, uh, I guess we'll hear from the Division first.

**Jeffrey Kinder:** Good morning, Chairman Porta, members of the Commission. I am Jeffrey Kinder, Deputy Administrator with the Nevada Division of Environmental Protection. Also, with me today from NDEP is Dr. Danilo Dragoni, Chief of our Bureau Air Quality Planning and Sig Jaunarajs, Supervisor of the Planning and Mobile Sources branch and he is on via camera. As NDEP and the Department of Motor Vehicles share responsibilities in statute and regulation when it comes to air pollution and mobile sources, also joining us today are Ivy Hatt, Services Manager, Morgan Friend, Management Analyst and Glenn Smith, Program Officer. I'd like to briefly present why Nevada has a Control of Emissions from Engines Program. This program is also often referred to as the Inspection and Maintenance Program or for short the Smog Check Program. Nevada's Smog Check Program is an important tool when it comes to emissions from mobile sources which make up a large portion of air emissions in the state. The Smog Check Program helps us to achieve and maintain attainment with both the Nevada and National Ambient Air Quality Standards. It is a requirement of the Clean Air Act, and the program must follow federal requirements when crafting both our statutes and regulations including sections 445B, 482, and 484. It is also part of our State Implementation Plan which allows NDEP to implement the Clean Air Act in lieu of federal EPA. So, how does our smog check program work? Basically, the smog check program in Nevada was introduced to inspect emissions from vehicles and assure that emissions from vehicle are kept within regulatory standards. The smog check program was implemented in Washoe and Clark Counties as these two counties have historical



problems with carbon monoxide emissions from vehicles, but it is still a very valid tool for the prevention of emissions of harmful pollutants from light duty vehicles today. Nevada has a decentralized emission testing program, which means testing is done in private testing stations across Las Vegas and Reno. In a centralized program, testing stations are large, state-owned facilities run by a contractor and they only perform testing and no repairs. Decentralized programs such as Nevada's are allowed for areas that have less severe air quality concerns and they provide motorists with greater convenience because of the many test stations available across the program area. To achieve the same level of program effectiveness as a centralized program, EPA requires that the emission testing of vehicles in a decentralized program such as Nevada's be separated from the maintenance and repair of vehicles unless the test station has a repair technician qualified by the state to make emission system repairs. The Code of Federal Regulations 40 CFR Part 51 speaks to the separation of testing and repair in decentralized emission testing programs. The reason for the separation is to provide additional assurances that the technician who is qualified to diagnose but not repair an emission failure might suggest service to be performed or parts to be replaced for a failed emission test that might not be appropriate to repair the emission's failure or could compromise the integrity of the emission control systems. Under Nevada's smog check program, authorized test stations are granted either a 1G license which allows testing and a very limited list of maintenance items to be performed or a 2G station which allows the installation, repair, diagnosis, or adjustment to any component or system of the motor vehicle that affects exhaust emissions. This distinction is important--this distinction is an important separation between those stations that only conduct testing and those stations that are licensed and meet additional requirements under the statutes and regulations to perform additional work. Again, the reason for the separation is important is to ensure a qualified and licensed technician installing, repairing, diagnosing, or adjusting any component or system of a motor vehicle that affects exhaust emissions. Currently, the statutes and regulations allow the 1G station to perform the following limited maintenance: oil changes; replacement of oil filters, air filters, fuel filters, belts, or hoses; and limited services--servicing of the fuel injection system. However, 1G stations may not currently install, repair, diagnose, or adjust any component or system of a motor vehicle that affects exhaust emissions. For 1G stations, that very limited list of maintenance items, after careful consideration, was adopted through a legislative action and a regulatory rulemaking process. As a reference for the Commission, there are currently 196 1G stations and 264 2G stations licensed in the state. So, in conclusion, NDEP and DMV are not opposed to changes in how the smog check program is implemented but these changes would need to be carefully considered, and vetted through a process that verified their efficacy, consequences on emissions, and fairness across the regulated industry and other stakeholders. Additionally, facilities interested in performing more activities than currently allowed under the 1G classification could seek authorization as a 2G station. That is a process that 264 stations have completed in Nevada, providing a viable path for stations that want to perform work beyond what is allowed for a 1G station. Uh, thank you for your time and we'd be happy to answer any questions the Commission has.

**Tom Porta:** Do Commissioners have any questions of Jeff Kinder, or DMV for that matter if they're here.

**Adam Sullivan:** Are the--this is Adam Sullivan for the record. Are the regulations that this--that separate the roles and, uh, of the 1G stations with the 2G stations, are they periodically revisited and evaluated and updated?

**Jeffrey Kinder:** So, thank you Commissioner Sullivan. Jeff Kinder for the record. So, I might call on Sig Jaunarajs if I don't get this correct, but the additions of the very limited maintenance items, um, pertaining to the fuel injection system was adopted in the near past but that went through after it was, um, brought forward through a stakeholder process. That was taken to the legislature. The statute was changed to add that requirement and then a rulemaking process was conducted.

**Adam Sullivan:** And when was that done?

**Danilo Dragoni:** I will need to defer to Sig [inaudible]. Sig, do you know?

**Sig Jaunarajs:** I might be able to weigh in, Mr. Chairman. My name is Sig Jaunarajs, I'm an environmental scientist supervisor with the Division of Environmental Protection. When the smog check program started many years ago, um, there were no additional services that were provided at the 1G stations. And then overtime, those stations, uh, petitioned, I don't know if they petitioned the SEC but they, uh, either through legislative action or directly appealing to the DMV, they added services such as oil change and filter change and hoses and so on. So, that has occurred over a number of years and the last service that was added, that was probably about eight years ago or so was the, um, fuel injection cleaning service.

**Tom Porta:** And I have a question, so specifically, you know, the battery changing has been linked to vehicle emissions, maybe you could explain for us, the Commission members, what exactly happens if that's done incorrectly, or what, to affect the emissions?

**Sig Jaunarajs:** I could--I could attempt to answer that, um, with what--you're right. I mean in the sense that those other, um, services I mentioned, oil change and so on, those are not thought to directly impact the emission systems. So, that's why they have been allowed. The concern with changing out the battery is that, um, on new cars, uh, they have what's called an OBD system, on-board diagnostics system, which is the car's computer that is checking constantly all the emission control systems and then recording if there's a failure. So, the concern is if the battery is changed and there's an interruption in power, uh, those codes could be erased. And-- and then that--that failure that the car is--was tracking is--is lost. Um, now I think the company, uh, Valvoline is going to make the point that they have, uh, a way of keeping the 12-volt system running while they make that, uh, change in the battery which is something many car repair shops do now, you know, so you don't lose your preset radio stations.

**Tom Porta:** Um, follow up to that, so the on-board diagnose, uh, OBD, uh, system how long have those had been installed in new cars or how far back do they go?

**Sig Jaunarajs:** Um, Sig Jaunarajs again. The OBD system came on--with the 1996 model year. So, all '96 and newer cars have their OBD system tested, '95 and older have what's called a tailpipe, uh, two-speed idle tailpipe test.

**Tom Porta:** So, roughly 25 years that these computer systems have been in place. So, one other question and then I'll open it to the rest of the Commission, with regard to, you know, not everyone including myself, if I need a new battery in my vehicle, I change the battery myself. Um, what's the difference here between myself doing it or other members of the population versus a station such as Valvoline?

**Sig Jaunarajs:** Well, I would say, uh, yes if you change your own battery and you didn't keep the 12-fold power supply going, those codes could be lost and then when you went to station to be emission tested, um, the vehicle might come up as being not ready for testing or the codes would just not be there, and the system would--would not know if there was an emission failure. And Mr. Chairman, I would also defer to the DMV folks who are, uh, there in the audience because they really understand the technical detail better than I do probably.

**Tom Porta:** So, would--if a customer brought his vehicle to the test station and they had changed the battery I would say six months later, do we have any information on how many people, you know, were denied the test because there was a failure shown by the on-board diagnostic system because of that change? Do we know that?

**Sig Jaunarajs:** Yeah, Mr. Chairman, in six-month--six months of driving, the vehicle would have reset itself.

**Tom Porta:** Okay, well let's say it was two months, sorry.

**Sig Jaunarajs:** Even at two months, it probably in a number of days the vehicle would--would reset itself.

**Tom Porta:** Okay. Other questions?

**Sig Jaunarajs:** In a number of days of normal driving let's say.

**Tom Porta:** Okay.

**Sig Jaunarajs:** Highway drive, meaning city driving.

**Tom Porta:** Okay. Um, other questions?

**Jason King:** Commissioner Porta as a follow-up, for the record Jason King, Sig or whoever is most qualified to answer. So, the 2G facilities, um, are set up to handle this kind of a situation with the OBD, that should keep the system charged up, so they don't lose the codes?

**Sig Jaunarajs:** Um, Sig Jaunarajs again. A 2G station has a licensed automotive technician who--who has received that 2G certification. So, they're a qualified mechanic, they do all kinds of car repair, um, and yes, they would be more aware of this, um, potential and would take the trouble to, you know, to make sure that the, uh, 12-volt system were running the whole time and not lose those codes. I think the concern here is that 1G tech, they shouldn't--is not qualified, um, to make that kind of, uh, decision or diagnosis.

**Jason King:** Thank you for that.

**Tom Porta:** Any other questions from the commissioners? Okay and I'll note that, um, we did receive a packet with DMV information, so, um, it should be here available. I don't know if that's posted online. I received it but--two days ago--okay, very good. Alright, so hearing no other questions from the Commission, I'll ask representatives from Valvoline to come up.

**Tom Porta:** I think we need to unmute them.

**Kristen Burke:** They're unmuted.

**Tom Porta:** Oh.

**Female Speaker:** That [inaudible].

**Male Speaker:** I do see Valvoline up there but--

**Tom Porta:** We couldn't hear them.

**Female Speaker:** [Inaudible].

**Female Speaker:** [Inaudible] I think, so.

**Tom Porta:** There you go.

**Male Speaker:** Go ahead now, can you hear--

**Steve Filler:** Can you hear me now?

**Female Speaker:** Yes.

**Tom Porta:** Yes, go ahead.

**Steve Filler:** There we go, that's better. My name is Steve Filler, I'm the Marketing Manager for Valvoline Instant Oil Change in Arizona and Nevada. We cover all the operations for all the stores. Um, I appreciate the opportunity to come before you today.

This is, uh, something we've been dealing with now for the last couple of months and we'd really like to get some resolution on it. For the last, uh, at least 15 years before key locations in question in the greater Las Vegas area performed the emissions inspection and replaced batteries, they've done so without complaint from consumers or from the DMV. They provide both of those services together under the leadership of four different companies in that time. We acquired the stores within the last three years and the--they were performing battery replacements and emissions inspections at that time. So, um, it was new to us, but this was a question of--but it's a question, you know, it's very valid and diagnostic information it's very important, in order to keep that information. Valvoline performs the battery replacement service at approximately 1,500 locations across the U.S. including many states where emissions tests are also performed by Valvoline, so we performed both. We don't perform any emissions repairs or other repairs on vehicles at any of our locations. Our service around the battery replacement has been designed to prevent the loss of that data because it's not just the diagnostic information, it's also in some vehicles how the power windows work, it's seat settings, it's radio controls, it's any of the wide variety of things that our consumers want to hold on to. They still want their clock to be set when we get done with their vehicles. So, we do use a memory saving device, it's a standard part of our service, the way our people are trained. We do realize that the 2G people have received considerably more training to do a lot more things. Our technicians are also trained. A certified technician with Valvoline is the oil change, plus they receive 300 hours of training before they are certified to perform any of our additional services without having a greater [inaudible]. Um, I provided a lot of the information and detail into that but, um, we're not really asking to do anything new, we're just asking to continue to do something but as I say we've been doing for the last 15 years. I think that's probably all I have. I would be happy to answer any questions.

**Tom Porta:** Thank you, Mr. Filler. Uh, questions from the Commission? So--so I have one, Mr. Filler, um, in your technician training, uh, I assumed that that includes, um, using the, uh, continual, uh, power source while changing a battery, um, that these technicians get?

**Steve Filler:** Uh, yes sir, and in the documentation I provided, uh, it does, uh, talk about it, where in the process that happens.

**Tom Porta:** Okay, but specifically there are training in using this device that provides uninterrupted power to the car while they're changing the battery.

**Steve Filler:** Uh, yes sir.

**Tom Porta:** Okay. Other questions from the Commission? Hearing none, uh, Division, DMV, any response?

**Jeffrey Kinder:** Yes. Chairman Porta, members of the Commission, Jeff Kinder for the record. I--I would just add, again, you know, there is a path for, you know, for--for testing stations that want to do more and that's the 2G. We already have 260 facilities that have, you know, met that training requirement, those requirements to do this additional work.

Um, you know, so for 1G facility wants to do more, there is a path there. I will say the statute is very specific on what that limited maintenance testing is allowed for for a 1G station. Um, you know and in the past as Sig has mentioned, you know, when it was-- there was interest from the industry and the agencies to make those changes, they went through a legislative process. Thank you.

**Tom Porta:** Um, okay, so just in case we don't--I don't want to [inaudible], um it's specific in the statute that these items are listed for 1G stations that are allowed to do?

**Jeffrey Kinder:** Jeff Kinder for the record. That is the correct, both in the statute and the regulation.

**Tom Porta:** Okay, so asking us, um, to change that seems, uh, would not be a correct way to go because if it's in statute, um, there's not much we can do about that unless the legislature changes that.

**Jeffrey Kinder:** Uh, Jeff Kinder for the record again. Yes, I believe if we do want to make changes for that, there is a process there. There is a legislative process followed up by rule of--regulatory rule in process and again, NDEP and DMV are open to changes to the program, changes have been made over the years, most recently eight years ago.

**Tom Porta:** Okay, so there is a path forward [inaudible], okay. Any other commissioner with question?

**Steve Filler:** If I might, Mr. Chairman?

**Tom Porta:** Yes, Mr. Filler, go ahead.

**Steve Filler:** Yeah, certainly I'm no legal expert but my reading of the statute does provide the--the Environmental Commission can authorize, um, a facility to perform additional services.

**Tom Porta:** Okay. I'm kinda confused here, uh, are we or aren't, you know, we're bound by the statute, and I guess, um, the Division is saying that it's in the statute that if they want to get this authorization to do this type of work, they need to work through the legislature to do that, Mr. Filler feels that it can be within our purview to change that. I'm not so sure.

**Jeffrey Kinder:** Uh, Chairman Porta, Jeff Kinder again for the record. I would agree that the statute does also allow, uh, companies to bring petitions before the SEC to make that change.

**Tom Porta:** Right, but specifically, if these things are listed in the statute about, um, fuel injector change, oil change, I mean to me it seems like we're fairly bound by what's in the statute and only adopt or change regulations surrounding those specific items that are in the statute under 1G. Is that correct? Would you interpret that?

**Jeffrey Kinder:** Jeff Kinder again for the record. I mean the legislature did take the time to spell out what those limited maintenance activities are in the statute but again the statute does also allow, um, you know, a petition to be made to the SEC to add additional items.

**Tom Porta:** Um, [inaudible].

**Male Speaker:** Mr. Chairman, do you think that, uh--

**Male Speaker:** [Inaudible] for safety [inaudible] of [inaudible].

**Tom Porta:** Okay.

**Mike Visher:** So yes, um this is in Exhibit 3, page 15, um, NAC 445B.460 number 4A as Mr. Filler points out "except as otherwise provided in the subsection, a facility that holds a license as an authorized inspection station or class 1 fleet station may test exhaust emissions but shall not, unless specifically authorized by the Commission." So, that's what they're seeking is, right, specific authorization.

**Tom Porta:** Right.

**Mike Visher:** But I would tend to agree with the Division that the appropriate path forward is through legislation and rulemaking not one-off authorizations from the Commission. Um, I think there's a--there's a better path forward, um, and the rules would be fair for everybody that wants to go forward with it, if they want to discuss how they want their facility to move forward. That's probably the best path forward for [inaudible] looking for a change is through the legislative and rulemaking processes, not a specific authorization request from the Commission, that's my opinion.

**Jason King:** To ask a question about the 2G facilities, are they specifically statute, uh, identified as those types of facilities that will change batteries that 1Gs cannot, is it that specific?

**Glenn Smith:** For the record, Glenn Smith, Program Officer, Department of Motor Vehicles. Uh, 2G facilities, it's--the, uh, NAC/NRS is not specific to what a 2G repair station can or cannot do. Uh, it's--it's all--they can perform all repairs is a 2G facility. Um, the regulation and the NRS, um, is more specific in regards to what a 1G facility is allowed to do. It's more, um, restrictive. Did that answer--

**Male Speaker:** And again, battery changing is not part of those duties that 1G facilities can perform?

**Glenn Smith:** Correct.

**Male Speaker:** Just clearly specified in the line.

**Glenn Smith:** It's--it's specifically--

**Male Speaker:** Excluded.

**Glenn Smith:** Correct.

**Male Speaker:** Well, they shouldn't.

**Glenn Smith:** If it says specifically battery replacement, no it does not. It's specifically states what they--what they can do.

**Male Speaker:** The oil change, oil filter, injectors.

**Glenn Smith:** Right, right. And also, um, any repairs which could or may affect the emissions outcome of the vehicle and-- and, um, to elaborate--

**Male Speaker:** That's prohibited under the 1G.

**Glenn Smith:** Correct, yes. Yes.

**Male Speaker:** Mr. Smith, do you have an opinion, uh, representing DMV on this?

**Glenn Smith:** Um, I would say that the Department has, um, some concerns in, uh, regards to, um, allowing 1G stations to perform this service, um, in, um, in, uh, to elaborate on--on one of your questions, the difference between if you change your own battery versus allowing a licensed 1G facility to change your battery is something, when you change your battery, if something goes wrong, uh, you lose your memory or worst case scenario, um, you short something out, um, that's on the consumer or the motorist. Where if it's through a licensed facility, um, that's where, uh, DMV takes responsibility regarding, um, consumer protection. Um, if, uh, a 1G facility for instance the way that Valvoline describes that they, um, keep the memory alive while they're changing the battery, they're going through, um, the OBDL [ph] or um OBD port to keep their back feeding, um, 12-volts back into the system to keep it alive, to keep the memory alive while they change the battery. Um, and I've read their procedure. It seems, um, very thorough but, uh, where it kind of falls short is, when something goes wrong, how do diagnose and repair when there's an issue. For instance, uh, just as an example, uh, you back feed the--you hook the device up and--and you're powering up the system, keeping it--keeping it live while you disconnect the battery cables, if you disconnect the battery cables and let's say that positive is, this--it's just, uh, and, um, uh, you know, a scenario that could happen, your cables short out or that positive cable were to hit anything metal within the engine compartment, like the battery tray or the bolt that holds the battery tray on, now you've shorted the system. So, when you short the system like that, this--the--typically on a--on a, um, OBD vehicle you have a circuit that is--keeps the memory alive in the--in the whole system that the vehicle's computer and all the modules. Um, so if you short that, that fuse will blow. When it does, um, the system is still alive because they have the external 12 volts feeding the system but once they replace the battery, hook everything



back up, disconnect the device, now that fuse which keeps that memory alive is vulnerable. But does the technician know it? Well, um, he doesn't unless he checks for that after--after the battery service is done. Um, if he doesn't, the customer drives away, um, and--and then shuts the vehicle off when they go home, starts it back up, well the memory didn't stay alive because now there's nothing to keep that memory alive. So, the customer drives to work, shuts it off, shuts it off, everything blanks out again. There goes the memory, so every time this vehicle is driven, um, and turned off, it's gone again until that fuse--at least that fuse or whatever it was, uh, gets replaced and taken care of. The problem with the memory being, uh, lost is when they go for an emissions test, these emission monitors that run, um, those monitors are what checks the system continuously when you're driving. When--when a monitor senses something, it's out of tolerance, that's what throws on the check engine light, it can make a vehicle, or the vehicle fail the emissions test. But with, um, it losing its memory, those monitors cannot--the computer cannot keep the memory in there once those monitors set, but it takes several drive cycles to get all those monitors to set. So, when those monitors are unset, and you go get an emissions test, instead you're going to get a rejected test because the computer cannot decide, are we passing or are we failing. We don't know. We don't have any memory here. So, um, until that is corrected and there's multiple drive cycles to set all those monitors again, that customer cannot get a smog test, therefore, they can't register their car until they get a passing test.

**Tom Porta:** Question. So, you know, if the scenario unfolds as you say it does, does that affect the vehicle emissions versus just the consumer's issue with having to deal with a rejected test?

**Glenn Smith:** Yes, it can. Um, newer cars, beginning in OBD during when OBD 2 began, but it's getting more and more sophisticated, the--the vehicle's computer has adaptive strategy. It adapts to, um, driving conditions, driving habits, um, constantly monitoring the emissions, um, adjusting for, uh, multiple or, um, performance and it's constantly making adjustments. But in--in--on--in addition to controlling the emissions, when that memory is lost, it has to go through that re-learning process again. So, it can affect the emissions, whether it would fail, not necessarily, but it does affect the output of the emissions because there are so many things in these--these modules, uh, your, uh, it adjusts shifting and the transmission, um, fuel trim, long-term, short-term fuel trim, all kinds of things that it's constantly being calculated and readjusted. Um, so, yeah, there is a relearning process. During that relearning process, the emissions and the performance are not at its optimum peak until it relearns all that again.

**Male Speaker:** Mr. Smith, do we have any data on how frequently this type of issue occurs? Are we chasing something here that is a perennial and regular problem or is this a rare and infrequent matter?

**Glenn Smith:** I--I ...

**Male Speaker:** Do you have any ...

**Glenn Smith:** I don't have statistics with me, but I do know that we frequently have customers coming into the emissions lab with a rejected test because they had their battery replaced. Um, that's very common, yes.

**Mark Turner:** And following up on that and that's because something like you said there was a short and blew a fuse?

**Glenn Smith:** No. What--the--what I was explaining there is when something goes wrong during this procedure, what can happen, not everybody blows a fuse because they have the battery replaced. Don't misunderstand me there. But when a battery does get replaced and that--that system is not, um, that memory is not kept alive, you know, it is like disconnecting your battery cable then it--that blanks--blanks everything out. All those monitors reset again, go back to unset, and several other things, you know, all your--your transmission shift points and, and other things like radio and pedal adjustment and seat--you know, memory for your seating, and then all that kind of stuff that affects that as well.

**Mark Turner:** I mean don't mean to keep beating a dead horse, but how long would it take through the driving cycle for all that stuff to just, you know, become new. To have new fresh data and everything.

**Glenn Smith:** As long as the keep alive memory fuse hasn't been blown, normally, driving cycles, it takes anywhere from four to seven days; however, there are some vehicles that are much more difficult to set, Volvos, Mercedes, different makes and models, early on during the OBD, '96 and newer, they had some vehicles that really had a hard time setting monitors. And we also get those customers that are retired, and they don't drive to work every day. They--they drive very seldom. And when they do drive, they--you know, part of the drive cycle is the vehicle goes from dead stone cold to--up to operating temperature. Sometimes that doesn't happen because they don't drive the vehicle that much. And we've had customers that it's taken, you know, clear up to a year or even more to get all those monitors to set to where we can get a valid test on the vehicle. And again, there are some vehicles that are very difficult to set.

**Tom Porta:** Other questions?

**Mark Turner:** So, let me just check...

**Tom Porta:** Go ahead.

**Mark Turner:** ... anybody who chooses, like myself and it sounds like Chairman Porta, to change their own batteries, would potentially be vulnerable to this as well?

**Glenn Smith:** Yes, definitely.

**Mark Turner:** I've changed a lot of batteries in my cars and I've never encountered this. And just as a more 50,000-foot level type of question. Um, it was brought to my attention that some states have ceased emissions tests just because the fleet of vehicles in their

states are just so new now that the--the point of doing such a thing is moot, just by virtue of electric vehicles and more modern vehicles emissions failed rarely if ever. So, do you see that in the future for Nevada as well or are we going to get to the point where the vehicles on a percentage basis are so reliable from an emissions standpoint that the whole exercise of emissions testing on an annual basis becomes no longer useful for operations.

**Glenn Smith:** Well, I did--that's, um, it would be quite a prediction to--to--comment on that, but I must say that, uh, um, areas which have an older fleet, especially in Washoe County, I can see where, uh, it--the program is necessary. In--such as, uh, Clark County where the--the fleet's not as old, possibly, but the thing is the area keeps growing and growing and--and plus we have, you know, electrical vehicles coming on board. So, it's, um, it--I--that's a tough one for me predict because, you know, um--but yeah, there could come a day that the emissions, the--the need for an emissions test would be--wouldn't be necessary. But it's many years down the road at this point knowing as old as our fleet is, yeah.

**Jeffrey Kinder:** Hi. Good afternoon, Mr. Turner. Jeff Kinder for the record. We did have a legislative bill last session that did change the frequency and made it longer for newer vehicles. So, newer vehicles are being recognized as far as what's required in the Smog Check.

**Tom Porta:** that passed?

**Jeffrey Kinder:** Yes.

**Tom Porta:** Okay.

**Male Speaker:** Every four years now.

**Jeffrey Kinder:** Every four years, yup.

**Male Speaker:** And what year or model was that effective?

**Glenn Smith:** If I may, it's the first four registration cycles that it doesn't require it and then thereafter it's every year.

**Male Speaker:** Okay.

**Tom Porta:** Alright. Well, any other questions with regard--Greg, did you have a comment?

**Greg Lovato:** Oh, sure. Thank you, Chair Porta. Greg Lovato for the record. So, you know, I think Valvoline raises a really good point here. You know, they put a lot of work in and have been successful at doing this. Um, and so, I asked some of the same questions the commission was asking when I was reviewing this and why exactly is this

a problem, right? And so, I think, you know, as--as you look at--it's more about how to administer this program than it is the merits of this particular issue. I think if we had, you know, a full hearing with, you know, a notice and all the 1G stations here and we were able to kind of gather up, you know, how actually much of a problem is this, and you know, it--but in effect, I feel like what we're doing here is--is almost recognizing that there are potential issues, recognizing that Valvoline has a process in place. In effect, if the commission were to grant a waiver here, it almost be like granting a permit, saying, it is okay to do this as long as you're following all these procedures, right? And so then, you might have the hundred or other so stations coming forward, and saying, well, how about I do that? And how about I do that? So, it's--it's not necessarily just, you know, the merits of this particular. It's just how do waivers--how should they be handled. They are afforded in the statute, how they got in there and why they're in there, is that a good idea? And so, that's--I--you know, I think that's kind of what we're--we're wrestling with is it wasn't, you know, given what Valvoline is doing, I don't think we were particularly concerned about how they were doing this. It was just--is this the right process to go through. So, just to add what our perception was. I don't think we necessarily thought this was a huge technical problem that would result in a bunch of dirty cars. It was just more, you know, is this the right way to do this. To come before the SEC every time someone wants to add something.

**Jocelyn Torres:** This is Commissioner Torres. To that point, it looks like they were at least, I don't know, 13 stations that they acquired when they were doing this. Was that being done through permission that was given by this Commission or was that sort of in violation of this 1G, 2G separation?

**Tom Porta:** I know the Commission has not acted on a petition like this. I don't think ever, in my history anyway.

**Mark Turner:** Just on Valvoline's behalf here; it sounds like they operated in a number of other states. From the NDEP's standpoint, are you aware of similar separations of duties in surrounding states for, for example in the State of California, which everyone would agree in this room has the strictest environmental standards around, would they be allowed to perform this type of work under California's laws that are in place right now or Arizona's? I can understand how they came here and acquired properties and began conducting the business of changing batteries because they're allowed to do so in a number of other states where they didn't have to obtain permission to operate, that they might just assume this is a seemingly simple task. It is to me and wants to Mr. Porta, I can see how that would look. Do we have any data on what goes on in surrounding states with regard to battery changing and emissions?

**Jeffrey Kinder:** Yes, so--Jeff Kinder for the record. I could defer to DMV. We've done some research recently since this petition, since we were made aware of this petition and saw the list of states that Valvoline put forward. There are a number of other decentralized smog testing programs that do allow this. But again, I would say, you know--all--every state has a different air program because you have to meet your specific needs. And so, I would say every state has a different smog checking program under the

same, you know, Clean Air Act federal requirements. I don't believe California allows it. I do know that other decentralized states that were called out in Valvoline's letter that do allow them. How that permission was granted, whether it was done through a regulatory action or through some sort of petition, I don't know. We'd have to do more research on that.

**Mark Turner:** Do you see any reason why if this were brought--brought into the next legislative session that something like this would be denied?

**Jeffrey Kinder:** Jeff Kinder again for the record. Again, much like, Glenn, I can't--I can't predict. But at least they would go through a stakeholder process, and it would include the whole of the universe of the 1G and 2G stations. I think to understand what is being asked and what the stations are currently doing. I will go back. I mentioned this briefly in my testimony, but back to 40 CFR Part 51, presumptive equivalency, you know, it does talk about owners of decentralized stations are contractually and legally barred from engaging in motor vehicle repair and service. So, again, that's the federal framework we're working under. Does battery changing fall under that? That would be a question, as Greg said, through a stakeholder process. And it wouldn't just be us engaging with the stations, you know. Obviously, the stakeholders, the citizens of Nevada, because we're here to protect the air quality as well as our federal partners and what is actually in our state implementation plans, both from a state perspective and for the challenges in both Clark and Washoe.

**Mark Turner:** It sounds as though that process was done for fuel injection cleaning went through that process. So, it's not unprecedented or being denied, I guess, for something like that if they can show that it doesn't affect emissions and then without messing up the cars and so forth.

**Jeffrey Kinder:** Yes. Jeff Kinder for the record. That did go through a legislative process and then once it was approved at the legislature, it went through a regulatory rulemaking process as well to update the regulations.

**Greg Lovato:** Well, just to add one more thing. Greg Lovato for the record. I think we've stated this a number of times. But I think, you know, there is a process for this to happen in Nevada and it's to be licensed as a 2G station. So, it's not prohib--expressly prohibited, it's just expressly prohibited right now. Or not expressly allowed, I guess I should say, for a 1G station.

**Tom Porta:** That's another option they can go to with ...

**Greg Lovato:** That's ...

**Tom Porta:** ... go to the 2G or petition the legislature to add battery changing with their process or whatever.

**Greg Lovato:** Right.

**Tom Porta:** Okay.

**Mark Turner:** I guess changing the thought but as a 1G station I don't want a full blown 2G facility [ph]. I want to change a battery so we can then go to [inaudible].

**Tom Porta:** Any other questions, concerns from the Commission? Alright.

**Steve Filler:** This is Steve Filler, if I might.

**Tom Porta:** Yes, Mr. Filler, go ahead.

**Steve Filler:** I just wanted to address a couple of things that were brought up in that discussion. First of all, these facilities were all performing both battery service and emissions when we acquired them three years ago. A lot of these were Terrible Herbst locations that were doing both as 1G facilities. The others had been [inaudible], a local chain and then became Valvoline franchise when we acquired the franchise. So, they were already performing [inaudible]. So, that's how we ended up doing it because it was already being done and had been since at least 2006. The other point I might bring up, the possibility of a fuse being blown during the battery replacement process certainly that is possible. I've been in this industry for over 30 years, and I've seen that happen. But when it does, if the vehicle will even start, it will have a check engine light that comes on. So, it's not like it would be a mystery that would go unresolved for long period of time. It would be readily apparent soon as you try to start the vehicle [inaudible]. The other thing is that whole point here is to not tamper with or modify the emissions status even after testing, which we all want. We, as a matter of course, I believe most places do. If the vehicle is coming in for emissions inspection and anything else, we perform the emissions inspection first. [inaudible] when the vehicle arrives, and that's how it's tested, which is I believe the intent of the statute. And then any additional things that are going to be done, such as an oil change or battery or a filter or whatever, they're performed after. So, the emissions test is done completely blind, before anything else is done with the vehicle. That's all I wanted to add. Thank you.

**Tom Porta:** Thank you. Questions for Mr. Filler? Alright. Any other ...

**Jocelyn Torres:** This is...

**Tom Porta:** Oh, go ahead.

**Jocelyn Torres:** ...Commissioner Torres. I think that was my question was that a few stations were doing them since 2006, but then you're saying that this Commission has never granted that exception. So, my question is, how would that--my assumption then is that this was being done without permission by anyone. And so, was in violation of the 1G restrictions.

**Tom Porta:** Yeah. That's what it sounds like to me Jocelyn.

**Jocelyn Torres:** Okay.

**Steve Filler:** Some of that comes down to how you interpret it. In the 1G guidebook, it specifically states, let me find it here, I have too many notes. Page 15 of the 1G guidebook [inaudible] things related to a tune up or emissions or whatever. This includes also replacing or servicing the battery if the result is the clearing of a diagnostic trouble code, then they started replacing batteries back in 2006 or earlier. They decided that they were fine within the statute provided that they did not in fact clear diagnostic trouble codes, and that was never the question. There's a question on DMV audits that wasn't--the question never came up with those.

**Male Speaker:** Where is that again?

**Male Speaker:** Page 15, 16.

**Steve Filler:** Page 15 in the 1G guidebook

**Male Speaker:** Okay.

**Male Speaker:** [Inaudible].

**Tom Porta:** I have a question for DMV. Was DMV aware that this was going on, this type of work at these 1G stations? And if so, were there actions taken or ...

**Glenn Smith:** For the record, Glenn Smith, Department of Motor Vehicles. Um, there was a warning given and I--I believe this is what, uh, brought this all about. They were noticed--put on notice for, um, replacing batteries. If they were, I have no knowledge of it previously, but I do know that they were given a warning, yes, when--when one of our emission control technicians went out and did their audit. They observed them doing that. So, that's why they were put on notice.

**Tom Porta:** And did they stop the practices at these facilities that you notified?

**Glenn Smith:** It's my understanding, yes, and-I believe so.

**Mark Turner:** Was every 1G facility in the State of Nevada notified that there's a line here that as far as DMV is concerned?

**Glenn Smith:** Um ...

**Mark Turner:** To be honest with you, to me, changing a battery is routine maintenance like changing the air filter or cabin air filter change. That's--you'd have a hard time making the argument - I'm a car guy. I got a lot of cars, a lot of experience with cars. That's a pretty basic--basic function. So, if you look at a 1G as a basic routine maintenance type

of facility like oil change, air filter change, et cetera. That would be an assumption on my part is 99 out of 100 people that walk down the street.

**Glenn Smith:** Well, I can say, um, all the inspectors in the State of Nevada, both 1G and 2G inspectors, are required to attend a recertification class every two years and that NRS and NAC that pertains to that is covered in the lesson plan, yes.

**Tom Porta:** Other questions from the Commission?

**Jennifer Ott:** Mr. Chairman, this is Jennifer Ott.

**Tom Porta:** Go ahead, Jennifer.

**Jennifer Ott:** While I appreciate the technical merits and the technical discussion of this, I am a little concerned about the precedent of this kind of decision by the Commission. And I believe it was, you know, Administrator Lovato or someone else from NDEP who had talked about doing a regulatory review of this and workshopping and I would like to say that I--I think that it would be important to include other members of the industry in this kind of decision so that there is a fuller scope and a fuller understanding of this issue by all industry members and not just of the group in front of us. So, my recommendation to the Commission is that instruct NDEP to look at this issue. Thank you.

**Tom Porta:** Thank you. Other questions from the commissioners?

**Jason King:** I don't have questions, more of just a comment. I'm really struggling and I feel for Valvoline.

**Male Speaker:** Yeah.

**Jason King:** I mean, clearly, the statute affords this waiver type of situation. And it puts it in this body's hands to decide if this rises to the level of whether or not this is something that we all [inaudible] changing batteries, wherever, does it--does it rise to the level that a waiver should be issued or--or is it a different kind of issue where it's like, well I have no idea about their [inaudible] there's no way we can give a waiver for that, we've got to get all the stakeholders together. And when doing the statute, this allows programs [inaudible] to me is, with all due respect to DMV and NDEP -- I hear Greg's concern that it's just--it's the best way to go through the process, stakeholder meeting and start the regulation process.

**Mark Turner:** And I tend to agree that without wanting to be offensive to anyone that to say that the bureaucratic pathway is the best pathway, I fundamentally disagree with this, especially when through this discussion I heard nothing about any potential risks to public health and safety, this here is a minutia type of concern from my opinion. Others may disagree with me on that we're all entitled to our opinions here. As Jason alluded to, language like this is put here for a reason, it's to take care of small items so that we don't take a small item through the arduous and painful bureaucratic legislative process with



the legislature, 10 sessions, which if you've been through that enough you kind of see that the legislative process is probably not the favorite way to do things. But I do agree with Greg Lovato too that would be cleanest in a lot of ways, so, I would hate to see a business like Valvoline have to kind of cease and desist on something like this on a technical issue, not a real true public health and safety issue, but a technical, minor technical issue. That's kind of where I stand in the matter.

**Tom Porta:** Thank you, Mark. I think I'll bring it back to the Commission now for--since we're having a discussion of it already, my only concern and I'm in complete agreement with Mark and Jason. My only concern is that the legislature specifically outlined very specific things. I mean, to get into the weeds that deep at the legislative level is a little bit concerning in that, you know, that's our job I always thought, to get into the weeds, you know, the legislature proposes a law, very general usually in nature and not very specific, and it's the boards and commissions that get into the weeds and adopt a specific regulation to do that. And this is kind of unusual in that, again, they've allowed oil filter changes and all this stuff and then they put the language in that we can consider these other things. I guess my concern would be, I would kind of like a legal opinion, maybe from the AG's office about our authority with regard to this and how much we can actually move forward. I mean, it seems pretty clear in the language, in the statute, that we could do that. But you know, I might throw out there that we maybe table this, get an opinion and if it is then, you know, within our purview to move forward with something like this, then we can take it up, you know, at our next hearing. That's just my opinion. Anybody else chime in, please.

**Male Speaker:** I just have one thought, that it seemed incomplete, but, and maybe there wasn't an opportunity to respond to it, but Valvoline points out some ambiguity in this guidebook where it refers to changing a battery and it's called out in a condition where that would not be allowed for, and just briefly reading this over, it seems like that would be... from Valvoline's perspective, it would allow them to provide this service at a 1G station as long as they didn't do this extra step, and I'm just curious, maybe this would be something we could ask, or how this is otherwise interpreted, or, you know, thinking past that, if we were to not approve this request for an exemption, what would the path forward be, if that were to be something that is a legitimate ambiguity on the part of the service provider.

**Jason King:** Chairman Porta, Chairman King for the record, I was going to add, this language appears to allow for the replacement of batteries at a 1G as long as you have the memory saving device, and you don't lose the codes. So, the question is, is the guidebook, DMV's guidebook in violation of the statute. Because I can see, as a 1G operator and I have this guidebook, it's like, well, I'm going to run with that because I have the memory saving device, and I'm not going to lose the codes, so I'm going to change that battery, and I'm sure the ones that Valvoline are operating are not the only 1G facilities out there changing out batteries. That doesn't fix the problem, I'm just saying there is ambiguity, and I can see 1G facilities running with that.

**Tom Porta:** Yeah, DMV [inaudible]

**Asheesh Bhalla:** Mr. Chairman.

**Tom Porta:** Versus... go ahead. Who's speaking?

**Asheesh Bhalla:** Thank you Mr. Chairman, I just wanted to state briefly for the record, yes, sorry, thank you, Asheesh Bhalla from the AG's office, you know I just wanted to state clearly for the record that the statute and the regulation essentially mirror each other and based on my reading the statute is very clear that the Commission can proceed to give a waiver if they determine there is a reasonable basis to do so or as Administrator Lovato had pointed out you can also go through the legislature to ask for some clarity or amend the statute, so both of the options are available to the Commission and I would just suggest that if there is a standard to be considered on whether to grant an exception you consider whether there is a reasonable basis, based on evidence before the Commission, that's what I think would justify making a decision here. But I just wanted to clarify the authority of the Commission is to either grant the exception or you can defer to the legislature.

**Tom Porta:** So, I'd say a follow up to that, if we're considering a waiver, do we have the information to show that this is, other than Jeff's direct testimony I guess, do we have the data or information to show that this is not a problem or not. With changing the battery effecting emissions.

**Jason King:** Jason King for the record, I don't think we have the data, to me, if that was the road we wanted to go down I would want to table it and allow DMV and NDEP to come up with what they believe is an acceptable standard for 1G stations to change batteries and then everybody who complies with that framework could get that waiver in the same vein I'm thinking if you went the other route and you brought this that you wanted to allow 1G facilities to change batteries you probably would get another handful or a dozen of services that could perhaps fall into some things that would be allowed under 1G and you might catch some other things that could then be put, could be codified, and maybe that could be a valuable process, to get at other things besides just batteries, and I don't even know if there are other things, but I bet that there are some 1G facilities that could come up with something.

**Mark Turner:** Mr. Chairman just a thought here and this is certainly not something that has to be acted upon. I see that you could possibly grant a waiver to all 1G facilities for this until the next legislature then clear that up at that time and my thinking on that is you do not interrupt a business process that has been going on, obviously, for 15 plus years and has not been halted by regulators in the State of Nevada, so that's just a thought to consider.

**Tom Porta:** So, my feeling would be, okay do we go with a waiver and then get the data or information, or do we get the data then grant the waiver, say at our next hearing if that's possible [inaudible].

**Mark Turner:** Or whatever timeframe that we think is reasonable to aggregate such data and then present it.

**Tom Porta:** Right. Any other thoughts from the Commission about possibly tabling this or versus granting the waiver? Okay, well seeing none, I will bring it up to the Commission for possible motion. I think we've discussed it, what's the purview of the Commission?

**Male speaker:** Mr. Chairman I'm of mind to grant a waiver on this matter for a specified period of time and I would kind of rely on you based on your experience to determine what is a reasonable length of time to collect that data and then make a presentation and then have that fall on one of our scheduled meetings at which time that waiver could then be extinguished or extended or whatever the Commission sees fit.

**Tom Porta:** Okay, so a motion has been made to approve the waiver with the timeframe, I would say, maybe the Division can weigh in, is 6 months, would be reasonable to get the information, then come back to us in June or July 2022, certainly faster than a legislative session. So that motion has been made is there a second?

**Jennifer Ott:** Mr. Chairman, may I ask a question on the motion?

**Tom Porta:** Yes, Jennifer, go ahead.

**Jennifer Ott:** Is this a motion for Valvoline or for all companies?

**Mark Turner:** I would say a motion for all 1G operators.

**Tom Porta:** Did you get that Jennifer?

**Jennifer Ott:** Yes, thank you

**Male Speaker:** And just to clarify what we alluded to earlier, a number of people coming to the Commission and asking for the same dispensation.

**Jason King:** And I know we have a motion before us, I'd just like to comment that I think we've gotten to the issue that Greg had brought up about how you administer this and if anything, I'd want to amend that motion to 1G facilities that have memory saving devices and are able to save the codes. I know that's pretty broad and I don't know what exactly what they submit to NDEP to get that.

**Tom Porta:** Some form of training program for their technicians to follow. So, I guess I'd ask Mark if you want to amend your motion and address Jason's concerns with regards to that.

**Mark Turner:** Okay, I would amend the motion to grant a six-month waiver to 1G facilities who are currently engaged in the business of changing batteries and have a policy and procedure in place for preservation of the computer stored data in those vehicles for

emissions until such time as we can aggregate the data on the real hazard and make either an extension to the waiver or kill the waiver.

**Tom Porta:** Okay, a motion has been made is there a second? I'll get to you Greg when we get to the discussion here, I just want to see if we have a second.

**Jason King:** I would second that.

**Tom Porta:** Okay, so now I'll open it up for discussion.

**Male Speaker:** I have a question for Asheesh, because the agenda item is specific to Valvoline it would seem that we can't go beyond what's in the agenda and impact other potential stakeholders, it's specific to Valvoline and not a broader group, is that correct?

**Asheesh Bhalla:** Ah, that is a very good catch, and I would agree with that position, that pursuant to the OML, NRS 241, we can only take action on what is only agenized for the public notice or something less than what is noticed there, so we are a little bit limited, and I apologize for not catching that.

**Mark Turner:** With that in mind I think we could actually walk that back and offer the waiver to Valvoline who is currently involved in the business of changing batteries and does have policies and procedures in place for memory preservation for emissions data until the next meeting after we can aggregate more data on this matter.

**Tom Porta:** Okay, so Mark you're amending your motion now to be specific with Valvoline on the advice from Asheesh, our Attorney General, to change the motion to be specific to Valvoline, is there a second with regard to that change on that motion.

**Jason King:** I would second that.

**Tom Porta:** Okay, so now we have a motion and a second. Greg?

**Greg Lovato:** Thanks Chair Porta, so, not to introduce more bureaucracy [inaudible], so as we explained NDEP's role is really just overall compliance with the Clean Air Act, delegation, so that's sort of our perspective. Obviously, the more information and specifics really is going to rely upon help from DMV, I don't know if they're really in a position to say, that they can meet the requirement. We're going to all do the best we can to try to bring back information even sooner than six months if we can, I just wanted to caution that, just wanted to make sure that we are not overpromising and underdelivering.

**Tom Porta:** Okay, well, maybe if the time comes and you feel that you need more time, let the Commission know, I don't think there's any problem with extending it. And we would like to see the data because it is important and if we can work through the Commission to get this handled and be for all 1G stations possibly in the future. Any other questions or comments from the Commission on this agenda item?

**Jennifer Ott:** Mr. Chairman this is Jennifer Ott. I wanted to explain my vote, I am going to vote no on this. Mainly because I would like to see this applied to all 1G companies and the petition in the future, I understand the other Commissioners' viewpoints but that's the reason for my vote, thank you.

**Tom Porta:** Okay, point well taken and I think the good news is possibly down the road here it will apply to all 1G stations if it's approved with the data that we get back and move forward with. Good, alright I'm going to close the discussion and call for a vote on Mark's motion for Valvoline. All those in favor say aye.

**Commissioners:** Aye

**Tom Porta:** All opposed

**Michael Visher:** No

**Jennifer Ott:** No

**Tom Porta:** So, we have Jennifer Ott as a no [inaudible]. Did you get that Sheryl?

**Sheryl Fontaine:** Jennifer is a no and Mike Visher is a no

**Tom Porta:** Okay, very good the motion passes and we will look forward to seeing information in six months' time with regard to battery changing. Okay, let's move forward.

**Tom Porta:** Next item on the agenda administrative briefing, Greg

**Greg Lovato:** Thank you Chair Porta, members of the Commission, Happy Holidays, Greg Lovato, NDEP Administrator. Welcome uh Commissioner Smith and Deputy AG Asheesh Bhalla. So, I just have some quick kind of highlights for Division accomplishments this year that I wanted to bring before the Commission so you're aware of all the great work that the Division's doing. As many of you know in 2017 there was a settlement nationwide with Volkswagen (VW), for them placing devices in the form of computer software designed to cheat on federal emissions tests. 25 million came to the State of Nevada as a result of that settlement and so the projects are trying to get completed, um, I can report that from 2018-2021 NEDP leveraged over \$14 million from the settlement to generate more than \$24 million in additional contributions from project partners, we funded 46 pollution reduction projects that will remove over 790 tons of nitrogen oxide pollution from Nevada's air. The largest project funded by the settlement was completed this year and converted over 100 pieces of airport ground support equipment (baggage handling tubs, belt loaders, things like that) from diesel to electric power so those actual pieces of equipment were replaced by this, and then the infrastructure was replaced by the airline McCarran International airport that one project had the biggest bang for the buck removing over 600 tons of nitrogen oxide pollution, so just wanted to report that progress. Work's still continuing, there is another round of projects being solicited that I think we'll be awarding some new ones, we took a break

last year in 2020, we are starting up again here in 2021 to do the rest of that, so want to report that success.

**Tom Porta:** Yeah, and before you move on if I recall correctly, Volkswagens' incidents weren't caught by vehicle emission testing, they were caught by researchers looking at data at the University of Virginia or something like that, that was looking at data from vehicle emissions and reported it to the EPA that there was an anomaly in the data and that prompted the investigation to move forward to find out that Volkswagen had been cheating you know through their software of firmware on the devices in their vehicles to bypass the emissions standards and give a passing test, so a little bit of irony there.

**Greg Lovato:** Definitely, I think it's being turned into something good, so cleaner air around the airport and more cost savings over the long run running those electric pieces of equipment and fuel. The next one is just a household mercury collection effort that the Division completed this year. We secured a \$30,000 competitive grant from EPA, we hosted household mercury collection events across the state from April through September, collecting over 120 pounds of elemental mercury from Nevada households for secure management at a total cost of \$13,000. It's a public health issue, elemental mercury, there was an incident in 2016 at the Walter Johnson Middle School and there have been others. In 2016, in Las Vegas, a student brought in, well, doesn't take a lot to have a pound of mercury, they brought in to school and the thresholds for mercury exposure are really low now, a lot of folks in the past will say "well, I used to play with mercury and I don't have any problems," but I do think it's similar to things like eating habits, cigarettes, exercise, everyone's system is different and so these protective thresholds are meant to be, you know, look at all populations, people from different backgrounds with different types of vulnerabilities. That exposure to several students and people in homes resulted in \$150,000 in response costs. Again, less than one pound, we've got 120, we're going to hold additional events to try to utilize the rest of that. That was, to me, a good success to mention and all the stress that obviously happened, you had the news cameras, the fire department, and the superintendents getting involved so not necessarily just the health effects, but just the disruption from something like that.

**Mark Turner:** Can we comment on future collection events?

**Greg Lovato:** So, we're going to host an additional event in Henderson. We think there's probably some more out there and then we're going to see if any other communities are interested. It's our Bureau of Sustainable Materials Management, Mike Ruffner in that group, he kind of teamed up with the county managers and the county [inaudible] coordinators, and said we will do a tri county in these different areas. Some have had really good results and others it could've depended on the day or something. We are going to try to use up all the funding, I think it expires next September, federal fiscal year, so we are going to try to use it all up if we can. And then just a couple of quick notes. We are moving along on changing our regulations to revise and make more consistent our anti-degradation water quality program and associated permitting programs. We are taking more time to review some of the scenarios at the request of stakeholders we've been talking to so when we come before you were going to talk about how this would

affect this, how would this affect that. We are going through all that right now. This really came up because we do have a number of permitting actions where we don't have what are called standards to maintain higher quality in place and so we just did not have a system in place, so we did not want that to create a lot of time and effort energy reinventing the wheel each time. We are trying to be proactive, but I think at the same time a lot of stakeholders are looking and saying "well, what's really broke that you're fixing?" I think that they're understanding that were trying to prevent future things, anyway there's a big group that we are talking to, we are talking when I mentioned to you in September, we were thinking we would be finished and be bringing it before you at this meeting, but we have a lot more work to do. So, we are doing a lot more outreach and interaction before we bring that back.

**Tom Porta:** So, looking down the road to simply add additional RMHQ's to surface waters of the State

**Greg Lovato:** Those normally take, maybe too long for [inaudible] process. We wanted to come up with a process that would set up the standards maybe in a quicker timeframe because setting RMHQs takes a certain background and not every place has that and so we wanted to come up with a methodology that you'd be able to use in situations that did not have all that background data and so but would still be consistent where we are at. And so we have developed that, but now people are saying well what about this operation, or what about this non-point source, or how just trying to kind of, and with the background of the definition of Waters of the US that keeps changing and people are very interested and we view the laws of the State of Nevada as a bigger backstop than the Waters of the US, we're protecting pretty much everything else, but then what does that mean in practice. Today, we talk about what the water quality standards are and how they apply to an ephemeral stream, things like that. We are putting a lot of work into this I think people are understanding that we are not trying to be more consistent but trying to set expectations clearly and be more predictable. So, we think that it's important in light of the sort of changing federal, there are so many intertwined lawsuits, that having a process in Nevada that's very straight forward regardless of what happens at the federal level is helpful for everybody.

**Tom Porta:** And I'll just add that I think Nevada is one of the leading states for protecting water quality. There are many states that simply do not have those higher quality standards in place on their surface waters, and it led to degradation up to the federal standard, but Nevada, 40 years ago, went beyond what was required by the Clean Water Act and adopted those RMHQs to protect higher quality waters. If the problem with that, like you said, is getting the data is so much time to establish the actual standard, it takes a lot, and if you are looking to make that more consistent and easier to do and maybe even faster while still protecting the waters that would be really good.

**Greg Lovato:** That's what we're tackling. And then just one other quick update, we are also continuing work, and are on schedule, with regulations in response to Assembly Bill 148 from this past session related to preventing mining "bad actors" from obtaining reclamation permits if they have outstanding defaults on reclamation obligations, either in

this state or in other states or other jurisdictions. We have done informal outreach with interested mining organizations as well as interested non-governmental organizations, we're aiming for public workshops, we've submitted those to, the draft regulations, to Legislative Counsel Bureau, we're looking at public workshops in January and a February SEC meeting to hear those since those do take in effect, that prohibition on a bad actor obtaining a permit, that takes effect in April 2022, so I want to have the regulations in place well before so we can avoid people not knowing what to do when they submit a new application in April, what am I supposed to do, how do I prove that I am not a bad actor, and you will learn more about it at the hearing but we are under a time pressure to bring that one forward. It would be heard, because it is under NRS 519A, reclamation statute, it would be heard by the SEC and now by the newly reconstituted Mining Oversight and Accountability Commission's members have now been fully appointed, they hadn't met since 2015, now they're planning to meet again, they would hear them and then they would provide recommendations and advice, if it was passed by the SEC, then they would provide recommendations and advice to the Legislative Commission, who would do the final review. We have to get all that done by April 1, so that's going to be a big focus of the February meeting of the SEC.

**Jason King:** Greg do you know who those new appointees are?

**Greg Lovato:** I know a few of them, I know that one of them [inaudible] used to be Vice President at Newmont Gold before his retirement. There is a number of folks from the Las Vegas area who have been appointed amongst a broad range of organizations and I think maybe Commissioner Visher knows the other appointees, I don't know off the top of my head. They had a meeting in October or September just to kind of introduce themselves and they will be holding meetings more regularly going forward it sounds like. As it pertains to NDEP, they oversee our implementation of, and I guess the State Environmental Commission's implementation of, the reclamation statutes. Not specifically the water pollution control statutes, reclamation statutes that set up the whole bonding and all that.

**Tom Porta:** Question; have any other states, maybe not specific to mining, but have any other states adopted a permitting requirement? Or prior to permitting requirement? Or can they justify they're not a bad actor?

**Greg Lovato:** We were aware of laws in Colorado and Montana, I think Montana had specifically passed something, but it was not all that successful in terms of how it was implemented, it got litigated quite a bit. The way that you define "good standing" [inaudible], you have to define who the law applies to, and it's decently defined in the statute with person's with controlling interest, then you get into the corporate law, which has its own ambiguities, but that one was established in the statute and now the Division is doing its best to define what "good standing" means and over what time period and all that kind of stuff, so the goal would be, you know, I think when they originally passed the legislation, or the concept of the legislation, they were thinking that we would sort of investigate this, and I said "well, we would need civil investigators and that would require money and funding," and they said "well, we don't want that," so, we are going to be



proposing, as required in statute, that they require an affidavit. The contents of that affidavit is what we are working on, and trying to nail down so that we are clear, consistent, predictable in terms of what we are asking for and so people know what they are submitting and the information we get is reliable. It's been quite a bit of work to try to define that already, but were getting pretty close. We've submitted the draft regulations, we've interacted with these groups, we don't have huge gaps but there could be some final points before we bring it before the commission.

**Tom Porta:** How far reaching is that? You've got parent companies and subsidiaries, I mean how inclusive is that looking back to determine if they're a good player or not?

**Greg Lovato:** I will maybe punt on that one, I don't know, Rick Perdomo if you can hear me but, Rick is our Deputy Administrator and he's been helping draft these regulations, if you want to give a quick answer Rick to that question.

**Rick Perdomo:** Thanks Greg, so that was a bit of a challenge but ultimately what we are looking at is persons with controlling interest. We know that when we see corporations in Nevada take control of mining projects there usually a large corporation. So, we define person with controlling interest to touch the subsidiary and the parent company and that's it.

**Tom Porta:** Thank you.

**Greg Lovato:** And that's all I had for the Commission.

**Tom Porta:** Questions for Greg? One quick one Greg, the purposed lithium mine north of Winnemucca, I guess the permits are in litigation is that correct? Or the project is in litigation. Any update on that?

**Greg Lovato:** Yeah, so I think you are talking about the Thacker Pass Mine. So, there's, the litigation is associated with the federal Record of Decision to grant permission for the mine to forward, that was issued in January of this year by the Bureau of Land Management. The proposal, the project is 100 percent on federal land. We have three purposed decisions that were public noticed in October. Those are an air pollution control permit, a water pollution control permit, and a reclamation permit. We have had the public comment period for those close, we've had public hearings on both of those, and then we are sorting through the many comments that we got as a result of that public comment period. The public comment period for the last permit closed last Wednesday, December 7<sup>th</sup> or 8<sup>th</sup> and it's going to take us some time to get through those. We are on top of it in terms of, I guess we want to make sure that all the issues that have been raised are thoroughly addressed. And even if folks are raising issues that are outside our jurisdiction, we are trying to be very careful to try to redirect folks, we've also actually done, even before making our own Notices of Decision, we got a lot of comments over the past year from people that we've posted on our website, we have a website for the project, and those permitting actions. We've actually responded to comments we received up until issuing the public notices, which is something we normally do not do, then we have

referenced, if they have an issue that's relevant to one of those permits, where on the permit is that issue addressed, or where in regulations? That took a lot of work. We are doing it again now for the comments that we've received since issuing it, so we understand that there is a lot of different perspectives on the mine, and we are really focused on are they going to comply with ambient quality standards, are they going to prevent degradation of water quality, and are they going to have adequate funding in place to reclaim the mine when it's closed. All the other stuff is important, we understand it for the community, but that's our jurisdiction, and that's what we are focusing on.

**Tom Porta:** And your permit issuance, once you sort through all of that, that's independent of the Record of Decision at the federal level? Whatever resolution comes of that, with the litigation, or are you waiting pending resolution of that?

**Greg Lovato:** Yes, it is completely independent. There is a number of parallel processes under way, other permits underway. We know they have been recently before the Department of Water Resources on hearings related to water rights, so all of those are parallel independent processes proceeding.

**Tom Porta:** Okay, thank you. Any other questions for Greg? Thanks Greg, appreciate it. Agenda item number 7 is public comment, I will open it up to, any members, I don't think there is anybody here but there might be some folks online. If you have called in, if you have a public comment, please state your name for the record and provide your comment. Okay, hearing none, I am going to close the public comment and move on for a motion for adjournment.

**Male Speaker:** So moved.

**Male Speaker:** Second.

**Tom Porta:** All in favor?

**Commissioners:** Aye

**Tom Porta:** Meeting is adjourned. Thank you.