

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF June 17, 1998

HELD AT: Las Vegas, Nevada

TYPE OF HEARING:

YES	REGULATORY
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES	AGENDA
YES	PUBLIC NOTICE
YES	MINUTES OF THE HEARING
YES	LISTING OF EXHIBITS

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
June 17, 1998
9:00 A.M.

The Nevada State Environmental Commission will conduct a hearing commencing at **9:00 a.m., on Wednesday June 17, 1998, at the Clark County Education Center Board Room located at 2832 East Flamingo Road, Las Vegas, Nevada.** The Board Room is located in the Clark County Public Schools Administrative Offices between McLeod Street and Eastern Avenue.

This agenda has been posted at the Grant Sawyer State Office Building, Clark County Commission Chambers and Clark County School District Administrative Office in Las Vegas; at the Washoe County Library and Division of Wildlife in Reno; and at the Nevada State Library & Archives and Division of Environmental Protection in Carson City. The Public Notice for this hearing was published on May 18, May 26 and June 3, 1998, in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

I. Approval of minutes from the March 25, 1998 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. Petition 96005 (LCB R-062-98) is a proposed permanent amendment to NAC 445A.194 to NAC 445A.201 for revisions to the water quality standards for Las Vegas Wash, Las Vegas Bay and Lake Mead. The proposed revisions add explanation of requirements to maintain existing higher quality (RMHQ). It is proposed to remove all references to "90% of the samples" and replace the language with "95% of the samples" for RMHQs. The pH standard for Lake Mead water quality standards in NAC 445A.194 and 445A.195 is proposed to be revised and a standard for escherichia coli is added. NAC 445A.196 and 445A.197, the standards for the Las Vegas Bay, are proposed to be amended to add RMHQs for chlorophyll a at stations LM4 and LM5 and to revise the standard for pH and nitrite. NAC's 445A.198 through NAC 445A.201 are proposed to be amended to add a standard for total suspended solids, revise the standard for pH in the lower reach and revise the RMHQ for total dissolved solids.

B. Petition 98006 (LCB R-063-98) is a permanent amendment to NAC 445B that updates the Environmental Commissions Rules of Practice. The petition amends NAC 445B.890 (Request for Hearing) by updating the address and zip code of the Commission. Updates to the Rules of Practice are fulfilled in accordance to NRS 233B.050(d).

Note: The regulatory workshop for petition 98006 (LCB R-063-98) was held on March 25, 1998, by the Environmental Commission during its regular hearing. Notice for the workshop was published in conjunction with the March 25, 1998 public notice. Notice of the workshop was also placed upon the agenda for the March 25, 1998, hearing.

III. Settlement Agreements on Air Quality Violations * ACTION

- A. Mt Hamilton Mining; Notice of Alleged Violation # 1306
- B. Homestake Ruby Mine; Notice of Alleged Violations # 1304

IV. Non Regulatory Items * ACTION

The Environmental Commission will conduct a preliminary examination of the complaint from Mr. Robert Hall of the Nevada Environmental Coalition regarding the Clark County Health District air pollution control program pursuant to Nevada Revised Statute (NRS) 445B.520 and 445B.530. This examination will consist of determination of whether to accept the petition and to schedule the matter for hearing on the program's adequacy. If a hearing is scheduled the Commission may decide all preliminary matters in including necessary parties and exchanges of evidence.

The petition by Mr. Robert Hall requests that the Environmental Commission act to supercede and assume jurisdiction over the Clark County Health District's air pollution program as provided for in NRS 445B.520. The complaint alleges that the Health District has established an emissions offset program that violates the Nevada constitution and state law. In addition, the complaint alleges that the Clark County Health District is proceeding on a fuel standards reform program that is in violation of NRS 445B.505. Other complaints have been alleged relative to the statutory authority of the Health District to conduct an air pollution control program.

V. Discussion Items

- A. Status of Division of Environmental Protection's Programs and Policies
- B. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling David Cowperthwaite at (702) 687-4670, extension 3118. The public notice and the text of the proposed regulations are also available in the State State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary, in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (702) 687-4670 no later than 5:00 p.m. - **June 11, 1998.**

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**NOTICE OF INTENT TO ACT UPON REGULATIONS
NEVADA STATE ENVIRONMENTAL COMMISSION
NOTICE OF HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning at **9:00 a.m. on Wednesday, June 17, 1998, at the Clark County Education Center Board Room located at 2832 East Flamingo Road, Las Vegas, Nevada.** The hearing location is at the Clark County Public Schools administrative offices between McLeod Street and Eastern Avenue.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations in Chapters 445A and 445B. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

1. Petition 96005 (LCB R-062-98) is a proposed permanent amendment to NAC 445A.194 to NAC 445A.201 for revisions to the water quality standards for Las Vegas Wash, Las Vegas Bay and Lake Mead. The proposed revisions add explanation of requirements to maintain existing higher quality (RMHQ). It is proposed to remove all references to "90% of the samples" and replace the language with "95% of the samples" for RMHQs. The pH standard for Lake Mead water quality standards in NAC 445A.194 and 445A.195 is proposed to be revised and a standard for escherichia coli is added. NAC 445A.196 and 445A.197, the standards for the Las Vegas Bay, are proposed to be amended to add RMHQs for chlorophyll a at stations LM4 and LM5 and to revise the standard for pH and nitrite. NAC's 445A.198 through NAC 445A.201 are proposed to be amended to add a standard for total suspended solids, revise the standard for pH in the lower reach and revise the RMHQ for total dissolved solids.

The proposed changes to the water quality standards have no immediate economic effect on business. Those agencies which operate Las Vegas Valley's three sewage treatment facilities and other dischargers to the Las Vegas Wash may realize an economic impact in the long-term. It is not possible at this time to estimate future costs or if any will actually be realized. Future economic costs will be dependent upon growth within Clark county. The purposed changes to the water quality standards will have no immediate economic effect on the public. The public may see long-term costs associated with necessary actions for maintaining the proposed water quality standards. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee.

2. Petition 98006 (LCB R-063-98) is a permanent amendment to NAC 445B that updates the Environmental Commissions Rules of Practice. The petition amends NAC 445B.890 (Request for Hearing) by updating the address and zip code of the Commission. Updates to the Rules of Practice are fulfilled in accordance to NRS 233B.050(d).

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There is no estimated adverse or beneficial economic effect upon business by this proposed regulation, either immediate or long term. There will be no immediate adverse or beneficial economic effect on the public. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The regulations affect the Commission's Rules of Practice, therefore there is no commensurate federal law or regulation. The regulations are no more stringent than federal regulations. There is no additional cost to the agency for enforcement. This regulation does not add a new fee, nor increase an existing fee. Persons wishing to comment upon the proposed regulations or any other matter listed above may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>.

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption".

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by the members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **June 11, 1998**.

This public notice has been posted at the following locations: Clark County Public Library, Clark County Education Center and Grant Sawyer Office Building in Las Vegas; the Washoe County Library in Reno; and at the Division of Environmental Protection and State Library in Carson City.

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STATE ENVIRONMENTAL COMMISSION

Meeting of June 17, 1998

Clark County Education Center Board Room
2832 East Flamingo Road, Las Vegas
Adopted Minutes

MEMBERS PRESENT:

Melvin Close, Chairman
William Molini, Vice-chairman
Marla Griswold
Fred Gifford
Roy Trenoweth
Mark Doppe
Joseph L. Johnson
Alan Coyner

MEMBERS ABSENT:

Michael Turnipseed
Robert Jones
Paul Iverson

Staff Present:

Deputy Attorney General Jean Mischel- Deputy Attorney General
David Cowperthwaite - Executive Secretary
LuElla Rogers - Recording Secretary

Vice-chairman Molini called the meeting to order and verified the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

Agenda Item I: Approval of minutes from the March 25, 1998 meeting.

Commissioner Griswold moved for acceptance of the minutes as presented.

Commissioner Johnson seconded the motion.

The motion carried.

Agenda Item II. A: Petition 98005 (LCB R-062-98)

Tom Porta, Division of Environmental Protection, (DEP) Bureau of Water Quality Planning (BWQP) explained the petition proposes revisions incorporate numeric changes, housekeeping measures, language changes to the narrative to the standards for Lake Mead, the Inner Bay and the two reaches of the Las Vegas Wash, areas toured by commission members on June 16. The BWQP began public outreach in June of 1997 and public workshops were held in February. Outreach included speaking with representatives from Fish & Wildlife Service, the National Park Service, operators of the Las Vegas Bay Marina, Southern Nevada Water Authority and presentations to the Lake Mead Water Quality Forum and the Southern Nevada Water Authority Citizens Advisory Committee.

Adele Basham, BWQP, reviewed Petition 98005 by sections:

Section 1. NAC 445A.194 Lake Mead: Proposes to add a section which describes the Requirements to Maintain Existing Higher Quality (RMHQ's). This new section states that an RMHQ is established when the existing water quality is better than the existing water quality standard for beneficial uses and lists the parameters for which RMHQ's have been established: temperature; pH; chlorophyll a; total dissolved solids; chloride; sulfate; total inorganic nitrogen; turbidity and color.

Ms. Basham explained that BWQP does not propose to add or delete any beneficial uses for Lake Mead and the new format of first describing the RMHQ and listing the parameters which have RMHQ's, then listing the parameters to protect beneficial uses followed by the designation of beneficial uses is the same format used for all four reaches.

Section 2. NAC 445A.195:

A proposed change is to make the format of each table consistent and to re-letter the footnote notations to reflect the order of appearance. Two format changes in the Beneficial Uses column are:

1) proposes to make the terminology of the Beneficial Uses in this table consistent with the wording in Section 1.

We do not propose to add or delete any of the beneficial uses in this table.

2) proposes changing the right-hand column by the addition of the note at the top of the column which is "Most Stringent Use Listed First". By adding this note we no longer need footnote b which refers to "the most significant use". When necessary, the beneficial uses were re-ordered so that the most stringent appears first and we propose making the same changes to all four reaches.

Temperature:

Propose moving the units, degrees fahrenheit and the Delta T from the left-hand column to place them immediately following the numeric standards where they appear. Throughout the standards tables for all four reaches we are proposing to move the unit so each numeric standard in the table will be immediately followed by the units that apply to that number.

pH:

Propose to move the units and change the existing beneficial use standard for pH from 7.0-9.00 to 6.5-9.0. EPA's current Gold Book criteria states that 6.5-9.0 should provide adequate protection to aquatic life. This change is consistent with pH standards adopted for other water bodies throughout the state.

Dissolved Oxygen:

Propose deleting the wording "90% of samples". That language is inconsistent with EPA criteria and with water quality standards for other river basins in the state.

Adele explained beneficial use standards are derived from criteria established by EPA based on scientific knowledge of the effect of the pollutants or their by-product on the health, welfare, community diversity, productivity and stability of biological organisms. RMHQ's are established when the existing water quality is higher than the beneficial use standard and are usually based on the 95th percentile of the current data. Approximately 5% exceedence of RMHQ's can be expected therefore the reference to 95% of the samples will be inserted for each RMHQ where applicable and we are proposing to delete the repetitive reference to 5 mg/l that appears in the third column.

Chlorophyll a:

Is a measure of the algae-biomass and is considered a good indicator of the state of eutrophication. Footnote b includes proposed changes:

(1) Line 1 specifies the summer standard applies from July 1 to September 30.

(2) Proposed removing the language "Mean indicates the average of not less than 2 samples per month. The samples must consist of the average of the data".

It is recommended that during those months when only 1 sample value is available that value can be included for evaluating compliance which is the intent of the new language in:

(5) "During months when only one sample is available, that value will be used in place of the monthly mean".

Commissioner Molini asked if that diminished the requirement of those conducting the sampling to sample less often.

Adele explained it would not, and one sample a month is sufficient in the winter months of December, January and February.

Commissioner Gifford asked if it would be wise to include that verbiage, that one sample would be sufficient during the winter months and more than one, inferring at least two would be required during the summer months.

Adele explained because sampling requirements are specified in a discharge permit the Bureau does not feel it necessary to specify all of those details within the standards.

Commissioner Johnson declared he was uncomfortable with loosening the requirement in the regulation and asked if a future argument could be made that the code doesn't require multiple samples in the summer.

Adele explained the proposed change appeared to be a tightening of the standard because we are saying regardless of how many samples you have you need to meet this mean number.

Commissioner Doppe suggested the language "the summer months as defined will require a minimum of two samples" be included and that would allow the flexibility needed in the winter months.

Adele agreed to that language change.

Adele explained subsection (2) deletes the language which require the samples be collected from "not less than 3 sites within a cross section of Station 3 that are". Currently, at Station LM3, data is collected at 3 points designated the center, north and south. Data analysis indicates there is no significant difference between these points so it is recommended that requirement be deleted. Adele referred to Figure 48, Page 92 of the Rationale for documentation.

Commissioner Gifford expressed concern with the part of that sentence beginning with "and must be representative of the top 5 meters of the cross section". Evidence in your graph shows that it is representative so why not just simply say "the sample will be collected from the center of the channel" and leave off the part "and must be representative of the top 5 meters of the cross section".

Adele explained the reason for that language is because chlorophyll a is typically it's highest at the water surface. We are trying to protect the eutrophication and the greening of the surface.

Commissioner Gifford re-phrased his concern - "of the cross section" is really what is bothering me. If you are only sampling one point you have no idea about the rest of the cross sections.

Commissioner Molini questioned if chlorophyll a is uniformly distributed through the top 5 meters would it be appropriate to say "from the center of the channel at 2½ meters"?

Adele explained it is currently sampled from the surface down to 5 meters and agreed to delete the phrase "of the cross section"?

Adele continued:

3) and footnote b - The current standard does not contain anti-degradation requirements for the area between the Inner Las Vegas Bay (LM3) and Boulder Basin (LM8). To prevent the Outer Bay from becoming more eutrophic it is proposed to add a chlorophyll a RMHQ of 16 micrograms per liter at LM4 and 9 micrograms per liter at LM5. These values were determined from the 95th percentile of the monitoring data collected from 1991 through 1996. The NAC's define LM2 and LM3 by depth but LM4 and LM5 are located by physical descriptions so we have also included those descriptions in (3).

(4) Proposes moving existing footnote k to footnote b so we keep all of the chlorophyll notes in one place.

Un-ionized Ammonia: a re-ordered footnote.

Total Dissolved Solids: we are moving the units and moving the reference to the Flow Weighted Annual Average to the second column above the #723, the number the Flow Weighted Annual Average applies to.

Chloride, Sulfate and Suspended Solids: Moving the units to immediately follow the numeric standards.

Nitrogen Species: removing the reference "90% of the Samples" from the left-hand column, adding 95% of the Samples to the RMHQ column and moving the units.

Turbidity: moving the units

Fecal coliform: proposing to add the Multiple 2 Fermentation Technique (MPN) as an acceptable method for determining fecal coliform bacteria. Standard Methods for the Examination of Water and Waste Water states fecal coliform bacterial densities may be determined by either the Membrane Filter Technique or the Multiple 2 procedure.

Adele explained E-Coli is a new standard. To protect the beneficial use of recreational use involving contact with the water it is proposed to add a beneficial use standard for E.Coli. Prior to 1986 criteria to protect swimming was based on the fecal coliform bacteria. Subsequent studies have indicated that E.Coli is a better indicator organism for

human health risks. E.Coli is a common bacteria found in the intestinal tract of humans and many domesticated animals. Most types of E.Coli are not harmful but a few pathogenic strains do cause diseases and routine analytical procedures for determining E.Coli densities in water do not differentiate between the pathogenic strains and non-pathogenic strains. The standards proposed is based EPA's Gold Book for the protection of recreation involving contact with water at designated beach areas and is consistent with the E.Coli standards for other river basins throughout the state.

Footnote d was created to allow the footnotes to appear in order and replaces existing footnote h with the most recent date that the water quality standards for salinity were adopted.

Section 3. NAC 445A.196 - Inner Las Vegas Bay:

Defined as "the confluence of Las Vegas Wash with Lake Mead to the western boundary of the campground" the proposed change changes references in NAC 445A.196 and 445A.197 from the Las Vegas Bay Marina Campground to the official name, Las Vegas Bay Campground.

There are no proposed changes to the existing Beneficial Uses. The difference between the Beneficial Uses for the Inner Las Vegas Bay and Lake Mead is that Recreation Involving Contact With Water and Drinking Water are not designated for the Inner Las Vegas Bay. Lake Mead is a National Recreation Area and provides habitat for several federally listed species so the National Park Service, U.S. Fish & Wildlife Service and the general public recommends designating all of Lake Mead as fishable and swimmable. During the 1982 Water Quality Standards Review the reach from the western boundary of the Las Vegas Bay Campground to the confluence of Las Vegas Wash was established as a mixing zone and contact recreation was not designated as a beneficial use. The reach was not safe for swimming because Las Vegas Wash discharges into the Bay. A major portion of flow in the Wash is wastewater effluent, although treated and required to be disinfected with chlorine the Wash may contain other bacteria, viruses and spores that are not eliminated by normal treatment plant disinfection processes.

NDEP feels that it is not appropriate to eliminate the mixing zone or designate that portion of Lake Mead as swimmable at this time.

Responding to comments and recommendations Adele proposed adding "The goal of the requirements of subsection 1 and the standards of subsection 2 is to ensure that all of Lake Mead is fishable and swimmable by the next triennial review required by the Clean Water Act" and explained the proposed goal of fishable/swimmable is attainable. We have data on the fecal coliform bacteria that meets the older recommendations for swimming but we have no data on E.Coli nor data on how safe it is to swim after a storm. The Lake Mead Water Quality Forum is looking at the issue of how storm events impact swimming.

Tom Porta explained the city removes chlorine, toxic to fish, before it goes into the Wash but when chlorine is removed the fecal count increases.

Adele continued to Section 4 - NAC 445A.197, the water quality standard table for Inner Las Vegas Bay.

Standards for Lake Mead that are not included in the Inner Las Vegas Bay include chloride, sulfate, drinking water and the fecal coliform. The current standard for Inner Las Vegas Bay is a note that applies to the point source dischargers. The bureau is not proposing a E.Coli standard for Inner Las Vegas Bay until we have data.

We are proposing to revise pH from 7.0-9.0 to 6.5-9.0.

Dissolved oxygen - delete the reference to 90% of the samples.

Nitrogen species - move the units and delete the reference to 90% of samples.

In the Standards for Beneficial Use column we are proposing to revise the nitrite beneficial use standard from 10 milligrams per liter to 5 milligrams per liter. Current EPA criteria recommends 5 milligrams per liter for the protection of a warm water fishery, a beneficial use for this reach. The nitrite standard, 90, is based on protection of a fishery.

Un-ionized ammonia - The dischargers and EPA have reviewed the proposed language and suggests amended language, the addition of the sentence which states " the average will apply both to an average through the vertical water column and also a four sample rolling average for each sample".

We propose deleting the reference to the 4-day average. Although this is how EPA criteria is written it has little

practical applicability since the samples are not collected in Las Vegas Bay every 4 days. Samples are collected weekly during the summer and monthly during the winter.

We propose deleting the language "consist of the average of the data collected from not less than 3 sites within a cross section of Station 2 that are representative of the top 2.5 meters of the cross section, and must" -

We propose to remove the reference to the cross section because like chlorophyll, six years of monitoring data indicate that there is no significant data between the north, center and south samples. The rational document, page 93, figure 50, plots the data at the center, north and south.

We are removing the reference to the top 2.5 meters because the un-ionized ammonia standard is intended to protect fish from ammonia toxicity and fish occur throughout the water column. The standards should apply throughout the water column.

To be most protective of fish, we are proposing to determine compliance in two ways:

- 1) as an average of the samples collected vertically through the water column for each sampling day;
- 2) as a 4-sample rolling average for each interval.

If samples are collected at the surface, middle and bottom of the water column, for each sampling event there would be an average of those through the depth. Then after 4 sampling events the 4 surface samples would be averaged, the 4 middle samples averaged, the 4 bottom samples averaged, and each of these averages would be compared to the .05 milligrams per liter water quality standard. This is to insure that the un-ionized ammonia concentration is not routinely greater than .05 at any particular depth interval.

The last change to this footnote is the deletion of the last sentence which currently reads "When the temperature exceeds 20EC these standards must be adjusted pursuant to methods accepted by the United States Environmental Protection Agency."

EPA revised the ammonia criteria in 1992 and based on additional toxicity testing it was determined that it is not necessary to include one of the temperature related factors in the formulas for calculating the criteria. Therefore, the temperature reference in the footnote is not longer relevant and should be deleted.

Commissioner Gifford asked where the language in the sentence that starts with "The single value must not exceed 0.45 mg/l more often than once every 3 years" originated.

Adele explained that is EPA criteria. The 0.45 was a site specific number that was developed for Las Vegas Bay and Lake Mead using the procedure that EPA recommends for the fish that occur in Lake Mead.

Adele continued:

Total Dissolved Solids, Suspended Solids and Turbidity - we are moving the units.

Fecal Coliform - we are adding the MPN as the acceptable methodology.

Footnote c is the updated footnote e related to salinity in the Colorado River.

Commissioner Johnson asked why E.Coli does not appear.

Adele explained E.Coli is for the protection of swimming, currently not designated as a use in this reach. There will be sampling for E.Coli to develop a database.

Section 5 - NAC 445A.198 - Upper Wash.

New language explaining RMHQ's which include Temperature, pH, Total Inorganic Nitrogen and Total Dissolved Solids.

The RMHQ explanation is followed by the designation of beneficial uses.

There are no proposed changes to the beneficial uses listed in 445A.198.

All references to Pabco Road in NAC 445A.198, 199, 200 and 201 will be changed to Telephone Line Road.

Telephone Line Road is approximately 1,000 feet downstream from where Pabco Road, now washed out, originally crossed the Wash.

Language is added to clarify that the city and country refer to the City of Las Vegas and Clark County, we also want

to clarify that the Upper Reach of Las Vegas Wash includes the City of Henderson Waste Water Treatment Plant discharge.

Section 6 - NAC 445A.199.

The same wording changes to the Beneficial Uses in the right-hand column of the table appear in this table. Proposes adding the Beneficial Use of "Propagation of aquatic life excluding fish, to the Beneficial Uses listed for pH and Dissolved Oxygen. pH and DO are intended to protect aquatic life.

Commissioner Molini asked why fish are excluded.

Tom Porta explained the Division is uncomfortable with including fish in the Wash because we do not have a water contact standard. It could give people the impression they can take fish from the Wash and that involves water contact. The basis for excluding fish from the Wash at this time is that we do not have enough data for E.coli.

Commissioner Johnson noted that on Page 8, Section 5 - 1. Total Suspended Solids, TSS, does not appear and requested it be included.

Adele explained TSS appears in Number 2 because we are proposing a Beneficial Use Standard rather than an RMHQ. Number 1 lists the RMHQ.

Commissioner Gifford observed in some narration the Total Inorganic Nitrogen is mentioned, in other narration it is not, yet it is always included in the table and asked if that is covered or is that an omission.

Adele agreed everywhere there is a number for RMHQ's it should be listed. That would be an omission and noted the Bureau would check for consistency.

Commissioner Johnson asked if the suggested change would be to add Nitrate and Nitrite into Section 1.

DAG Mischel explained the suggested change would be to make sure Total Inorganic Nitrogen is in each section for RMHQ's -

Adele continued:

The first 3 columns reflect the same changes that we have made in the other tables, moving the units so that they immediately follow the number to which they apply, deleting 90% of samples and inserting 95% of samples where appropriate.

pH: Referencing the amendment handout on page 2, we are proposing to delete the RMHQ's for pH from both the Upper and Lower Reaches of Las Vegas Wash. In order to meet the current RMHQ's for pH wastewater, dischargers need to adjust the pH of their effluent by adding salts and these salts contribute to the TDS in the Las Vegas Wash.

Our proposal to revise the RMHQ's for TDS is based on the improved water quality. At projected permitted flows for the City of Las Vegas, Clark County Sanitation District and the City of Henderson combined, it has been estimated that the increase to TDS load to the Las Vegas Wash (the result of adding chemicals to comply with the RMHQ for pH) is approximately 36 million pounds per year. Since compliance with the pH RMHQ requires the addition of salts, counter-productive to the reduction of salinity loading to the Colorado River, it is proposed to delete the RMHQ's for pH.

Commissioner Johnson asked how this fit with the new beneficial use of aquatic life and the ultimate goal for establishing fish within that? What would be the projection in the Wash for exceeding the beneficial use of establishing aquatic life?

Tom Porta explained EPA has widened the criteria for pH on its beneficial use side. We feel this is very consistent by removing the RMHQ for pH and we are not going to harm the beneficial use at all.

Commissioner Gifford commented that looking at the values given earlier in your background document for TDS it looked like if you had the 36 million pounds added to it that you are increasing the loading by around 40%, a significant reduction in TDS against pH changes.

Adele continued:

We propose to add a beneficial use standard for total suspended solids to Las Vegas Wash for 3 reasons:

- 1) for the protection of aquatic life which is a designated use for Las Vegas Wash
- 2) a suspended solids standards for the Las Vegas Wash would serve to protect the down-stream uses. Propagation of aquatic life, including a warm water fishery, is a beneficial use for Lake Mead. The existing water quality standard for suspended solids in Lake Mead (including the Reach which covers the Inner Las Vegas Bay) is less than 25 milligrams per liter.
- 3) action is needed to reduce the erosion in Las Vegas Wash and a suspended solids beneficial use standard will provide impetus towards this goal.

We originally proposed a standard of 80 milligram per liter based on EPA's recommendations. Numerous comments supported this criteria however questions were raised about the use being protected and attainability of the standard. The data at each of the monitoring sites on the Wash is graphed on page 30 and 31 of the Rationale document and 4 monitoring sites are combined in Figure 19 on page 56. The attainability of the originally proposed 80 m/pl is questionable. Looking at the data from North Shore Road (LBW 5 on page 31 - figure 60) it appears that 80 m/pl was exceeded more frequently in 1997 than in previous years. EPA's recommendation of 80 m/pl is for the protection of fish. EPA does not make a specific recommendation for the protection of aquatic life other than fish and fish are not designated in the Wash. For these reasons we have revised the 80 m/pl per liter to 135 m/pl and that is based on the 95th percentile of the combined data from LBW 3 and LBW 5, excluding the data on days when the flow was greater than 110% of average. Because suspended solids increase dramatically during storm events the standard will not apply when the flow is greater than 110% of the average as measured at the nearest flow gauge. This is stated in footnote c. on page 10.

Commissioner Molini commented that even with that new higher value - lower standard, you still have exceedences with regular average flow.

Commissioner Johnson observed that the rationale shows that during major storm surges there is significant erosion. It would be good public policy to establish criteria that would force some stabilization of stream banks and establish holding catch basins for wetlands and other policies.

Tom Porta explained the Corps of Engineers are undertaking several projects throughout the Las Vegas Valley to reduce the flows to the Wash during flood events, to make them more uniform and the Lake Mead Water Quality Forum is working with the Flood Control District on these issues. If outfall diffusers are utilized we'll have very little flow in the Wash so perhaps more permanent structures need to be put in place. Another issue is the wetlands park and what contributions that will have to the Wash. That is the reason for the proposed standards.

Commissioner Molini acknowledged the proposed standards are fine and that a good job has been done trying to maintain water quality in Lake Mead, considering the communities growth, but in his 16 years on the Commission he has seen a continual deterioration of the Wash. The recent breach in the dike at Pabco Road has caused problems and the substantial wetlands above Pabco Road no long exists. The 1990 Park & Wildlife Bond Bill appropriated \$13 million in bond money to Clark County for enhancement of the wetlands in the Wash. The Water Quality Forum is engaged in looking at these problems but it is time for this Commission to make a statement about that resource. Established wetlands and natural processes help to clean some of that water. A push from this Commission, in terms of setting some goals, might be helpful in accelerating recovery of that Wash resource.

Tom Porta reported he felt the proposed suspended solids standard is that push. At the Forum meeting questions were asked -if because that erosion control structure is gone if the standards proposed are being exceeded. Forum members asked for the standard to take before their board, to tell them the standard needs to be met, thereby justifying the cost to replace structures. There are also issues with the wetlands park - if there is enough area to handle that flow you saw yesterday. Many issues need to be addressed. The BWQP prefers that we give the Las Vegas agencies and communities forming a chance to solve these problems and if they cannot arrive at a solution then we state in our next triennial review what standards we need to set.

Commissioner Doppe expressed concern with waiting 3 years. The charts on page 30 and 31 of the rationale document show a significant degradation since 1996 with regards to solids. The role of the SEC is to set a leadership tone. We are no longer able to include fish in this standard but our number 1 goal should be to never lose a beneficial use.

Chairman Close agreed the SEC has been waiting too long to take affirmative action and asked who the SEC could write to, to strongly recommend that action be taken.

Tom Porta suggested the SEC write to the Lake Mead Water Quality Forum. The Forum has brought all these agencies together to try to solve these problems.

Commissioner Molini stated that over his career with the Commission he has seen the Wash viewed as a sewage effluent channel but it really is a tremendous aesthetic and valuable educational resource for the community.

DAG Mischel asked if the Bureau has considered separate standards for 1999 that would increase tougher standards.

Tom reported that the Bureau looked at past trends, what the water quality is and has been, to establish the proposed standards.

DAG Mischel asked if they would be opposed to the Commission setting a goal like you did in Section 3(3). That fish be added as a beneficial use.

Tom replied they would not be opposed because that is our intent.

Commissioner Johnson referred to Subsection C on page 10 - Total Dissolved Solids Standard does not apply when flows are greater than 110% - and asked that portion be deleted. It would accelerate the consideration of other mitigation and control functions in the Wash if there were an increase in the numbers.

Commissioner Doppe noted the 110% is designed to accommodate storm events so if you are going to do that then you basically raise the standard for the whole thing.

Commissioner Johnson explained this is only for suspended solids that this is functioning. If your goal is to maintain aquatic life and there a storm that increases flow and suspended solids, that is supposedly what flood control and establishment of wetlands are supposed to take into account, not the normal flow. What impact would this have in your regulatory and sampling actions?

Tom Porta explained the impact would be more violations during storm events that may be the impetus to push the various agencies to move quicker to build the structures and repair the Wash.

Commissioner Gifford noted the 110% of average flow is averaged over 12 months so in terms of a storm event it might take a 20-year storm to cause a problem in the winter time but only a 5-year storm in the summer time

because waste-water flows are greater in the summer time.

Adele Basham explained there is almost 200 CFS in the wash in a non-storm event and that is why we picked the 110% because the flow is fairly constant in the Wash.

Chairman Close noted a significant difference between the flows in January and August.

Commissioner Coyner referred to figure 60 on page 31 of the rationale document - CFS on days when flows exceeded the 110% of average. 9 of the exceedences were above 110%; 2 in November; 1 in June; 1 in December; 3 between September and December, and 2 late in the year. There are more exceedences in the winter months.

Adele Basham referred to page 60, the graph of the mean monthly flow in Las Vegas Wash. Figure 22 shows the combined discharge flow. The dischargers do more re-use during the summer months so that may dampen the effect that you are suggesting.

Adele explained when we developed the Total Maximum Daily Loads (TMDLs) for Las Vegas Wash we did an analysis of what was needed in the Wash to meet the standards in the Bay. At that time we used the same assumption of 110%. On a normal river system this would not work but because this flow is so constant we felt that a 10% difference was a reasonable number to represent a storm event versus just the average flow.

Chairman Close asked what the penalty is for exceeding a standard.

Tom explained the penalty would be getting on EPA's 303(d) Listing as an impaired water.

Adele explained there are currently TMDL's for phosphorus and ammonia on the Wash. Federal regulations require that if you are not able to meet water quality standards then you need to take additional action and one of those is setting a TMDL.

Commissioner Johnson observed if we adopt these standards and later it is determined to be an impaired water-way then you must implement some additional control mechanism, exactly what we wish to see happen.

Adele Basham agreed and reported NDEP is required by law to prepare - every 2 years, a list of impaired water bodies, identify actions we are going to be taking for those impaired water bodies, develop the TMDL which can be as general as a management plan, then EPA approves that.

Commissioner Molini asked, if we were to do that and an exceedence occurred because of storm run-off events, that would trigger impaired water which would trigger total loading which would trigger a greater removal of phosphorus and nitrogen by the water treatments plants so what would have to be accomplished in the wastewater treatment plant to reduce the total loading of suspended solids.

Commissioner Johnson explained what we do on TSS won't affect any of the other items and standards that we set. The present outflow from the treatment plant is fairly low in TSS now so it probably wouldn't be rational to predict that there would be impact upon their operation for TSS where the majority obviously comes from stream bank erosion.

Adele explained the plants currently have permit limits for TSS which are much less than the number we are proposing and they have no trouble meeting those limits.

Commissioner Doppe observed you are affecting the ability of the community to spend its dollars on the items it can have the most impact on. You can ask the community to spend dollars to maintain stream banks that would be eroded 2 days a year or you can ask them to spend the same dollars to start bringing the over-all water quality back down. If we are to choose, I would rather spend it protecting the 363 days of the year and start to bring those

standards down rather than put in extraordinary protection methods for the 2 days of the year when it rains.

Tom Porta suggested NDEP report back to the SEC in a year with an update on what the Lake Mead Water Quality Forum is doing towards achieving the goals that we all want.

Commissioner Molini suggested a letter be addressed to the Lake Mead Water Quality Control Forum expressing our concern with continued degradation of the Wash and requested that NDEP also report back to us in 1 year.

Commissioner Johnson agreed, establishing a standard where we haven't had one before is a major step and a message and agreed a letter would be appropriate and would satisfy his concerns.

Commissioner Doppe asked to include in the letter the Commission's goal of is to increase the beneficial use.

Commissioner Close expressed amazement that no action may be taken until EPA finds that we are exceeding these standards and orders action. The degradation of the Wash is apparent, the funds have been there for years and more aggressive action should be taken.

Allen Biaggi, Deputy Administrator, NDEP, informed the Commission that the Division is a member of the 21 member Forum which consists of state, local and federal governments, and community members and suggested a letter expressing the concerns of the commission be sent to each member of Forum. Clark County and the Southern Nevada Water Authority have begun activities in the last few months but a letter would accelerate action.

Commissioner Coyner suggested the letter also convey the Commission's preferences in regards to how that quality is achieved, retainment structures, the creation of wetlands, etc. to act as a natural cure.

Chairman Close made a motion that the Commission send a letter expressing our concern over what we have observed and the lack of action over a number of years to members of the Forum.

Commissioner Johnson seconded the motion.

Commissioner Doppe expressed his belief that the Commission should adopt the proposed standard but let the letter convey the Commission's dissatisfaction and that we want fish as a beneficial use back in the standard.

Chairman Close included in his motion a request that the Division report back in 3 months as to what is happening and to request in the letter that the Water Quality Forum advise the Commission of their short and long-term goals so we know that something is being done.

The motion carried.

Adele Basham continued with the proposed petition:

We are proposing to replace the parameter of Total Filterable Residue with Total Dissolved Solids.

To comply with the state's anti-degradation requirement we propose to revise the TDS RMHQ from less than 2300 m/pl to 1900 m/pl, consistent with the goals of the Colorado River Salinity Control Forum. Data collected from April 1979 - 1981 reveals TDS concentrations in the Wash have decreased during the last 10 years. TDS data collected from 1991- 1996 show that the current concentrations are much lower than the existing RMHQ's, Page 20 of the Rationale. RMHQ's are based on the 95th percentile of the current data or the existing RMHQ, whichever is more restrictive. In the case of TDS in the Wash there are additional uncertainties which need to be considered when setting the RMHQ including the fluctuations in TDS concentrations of the water supply, local ground water and the possibility of decreased wastewater treatment flows due to re-use or water conservation programs. Since approximately 90% of the flow in the Wash is wastewater effluent and the quality of the wastewater effluent, in terms of TDS, is largely dependent on the water supply, we conducted further analysis of historic TDS fluctuations

of Lake Mead, the main source of drinking water. On page 18 of the rationale, data from the Southern Nevada Water Authority for the period 1980 - 1996 shows mean annual TDS concentrations varied approximately 225 m/pl. The proposed RMHQ of 1900 m/pl is based on the 95th percentile which is 1700 m/pl plus 200 milligrams p/l for the uncertainties mentioned. The proposed TDS RMHQ revisions are based on the current physical and chemical characteristics of the Las Vegas Wash and any future activities - installation of erosion control structures, wetlands, increased water re-use or alternate wastewater discharge sites - or if long-term drought causes an increase in the Las Vegas Wash TDS concentrations the RMHQ's may be revisited to reflect any significant changes in the system.

Footnote b refers to Dissolved Oxygen (DO). We propose to delete the wording "It is known that" to make this language more succinct; propose to replace the wording of the beneficial uses with the wording that appears in Section 5 and propose to eliminate the sentence "Existing conditions prevent the attainment of aerobic conditions as of September 9, 1982" because this is no longer true. Data collected from 1991 - 1996 show that aerobic conditions do exist, likely a result of the increased flow and the cutting of the Wash. Figure 11 on Page 46 in the Rationale shows that the DO is usually well above 5 milligrams per liter. If constructed, the proposed erosion control structures and Clark County Wetlands Park should reduce the flow velocity and increase the marsh areas which could potentially result in lower DO levels. Therefore, so as not to preclude the development and restoration of the marshes and wetlands in the Wash, a numeric DO standard is not proposed. Instead, the additional language in footnote b is proposed to read "so as not to prevent the development and restoration of marshes and wetlands in the marsh aerobic conditions are established as a goal rather than a standard and the goal is not intended to preclude the development of a limited fisher in selected areas".

Adele continued explained Sections 7 and 8 pertain to the Lower Las Vegas Wash and the proposed changes discussed in Section 5 also apply to Section 7.

The proposed changes discussed in Section 6 also apply to Section 8, including the deletion of the pH to RMHQ, the addition of the Suspended Solids Standard, and the revisions to the DO footnote.

For pH we propose to change the beneficial use standard from 7.0-9.0 to 6.5-9.0.

For TDS, the methodology just described under Section 6 was applied and we arrived at a number of 2400 m/pl. The existing number is 2600 m/pl.

Tom Porta reported that comments received by the Bureau on the proposed standards had all been covered in today's discussion.

Commissioner Molini called upon Douglas Karafa from the Clark County Sanitation District.

Mr. Karafa, Clark County Sanitation District, represented all the dischargers, the Sanitation District, the City of Las Vegas and the City of Henderson - expressed appreciation to NDEP for the opportunity for input on the standards and reported a joint letter to the Commission expresses their support for the standards before you.

Commissioner Molini clarified that Mr. Karafa was speaking in behalf of the water treatment entities for Henderson, Las Vegas and Clark County.

Kent Turner, Chief of Resource Management for the Lake Mead National Recreation Area, expressed appreciation for the goal of developing all of Lake Mead as fishable and swimmable and the Commission's strong support of that goal as a beneficial use in the next three years standards. The National Park Service (NPS) is concerned that until such time that goal is incorporated as a beneficial use for body contact recreation for the entire lake that the recreation area will be accepting unacceptable water quality in areas the NPS is mandated to protect. The NPS has broad responsibilities to provide for boating, fishing and bathing for the public and to maintain the potential and quality of those recreation areas for future generations, responsibilities that lead us to have a great interest in the future of water quality within the Las Vegas Wash and Bay. The acceptance of beneficial uses in water quality standards do not include body contact standards for a portion of the lake and threatens the lake as a whole. The area of the Inner Bay may seem small in comparison to the rest of the lake but our concern is that if you cannot meet a water quality standard for body contact recreation in that area that you will continue to see degradation into Boulder Basin. With the increasing volume of treated effluent and increasing surface run-off in the urban area into the Wash

it is likely that Las Vegas Wash water will degrade larger portions of Lake Mead in the future, farther from the confluence unless something is done soon. Lake Mead is truly a jewel in the desert and the outstanding recreational opportunities associated with Lake Mead add millions of dollars annually to the local economy and make invaluable contributions to the overall quality of life in Southern Nevada. The lake provides drinking water for Southern Nevada and 20 million downstream users. This precious resource deserves all of the attention and ingenuity the various agencies with a role and stake in the lake's water quality can muster and by initiating the Lake Mead Water Quality Forum, NDEP has begun a program to ensure that Lake Mead is an equally outstanding resource for future generations. The adoption of body contact recreation as a beneficial use for the entire lake is an opportunity to set measurable goals to guide the community to meet the long-term vision of maintaining the outstanding recreational, natural resource, and economic values of Lake Mead. For the NPS to accept a standard, without comment, that allows degradation of water quality anywhere in the lake, would be inconsistent with our legislative mandates and our understanding of the Clean Water Act. We support the Department's recommended goal that all of Lake Mead be fishable and swimmable and recommend that to achieve that goal the Department needs to establish a standard that recognizes body contact recreation as a beneficial use for the entire lake.

Commissioner Doppe asked if Petition 98005 provides for degradation of water quality and if so, how?

Kent Turner explained the concern was that the initial draft had a time statement of 3 years to be fishable and swimmable. The NPS hopes the Commission and the members of the Lake Mead Water Quality Forum will press to see that goal adopted in the next standards review.

Commissioner Doppe commented that as Petition 98005 is written there is a time-frame, a 3-year time-frame for "all of Lake Mead" and that it does include the Inner Bay as well.

Larry Paulson, member of the Lake Mead Water Quality Forum and the Southern Nevada Water Authority Citizens Advisory Committee, reported they were trying to address 3 problems: wastewater discharge going into the lake and the potential increase in the next 20 to 30 years; storm water run-off and contaminants carried into the Bay; and groundwater seepage that gets into the Wash, into Lake Mead and down through the entire Colorado River system. Groundwater seepage has perchlorate and other contaminants causing great concern in the Las Vegas Valley and elsewhere in the Colorado River system. We are trying to come up with a comprehensive water quality improvement project to address these issues uniformly. Previously, no one had overall responsibility to coordinate all the agencies that have a stake in the Las Vegas Wash. We will recommend, at the meeting tomorrow, that the Southern Nevada Water Authority be given the over-all responsibility of coordinating the approximately 20 agencies involved in the Lake Mead Water Quality Forum and we will all try to move ahead with a comprehensive plan. Mr. Paulson agreed immediate action should be taken and encouraged the Commission to adopt the proposed standards.

Mr. Paulson reminded the Commission that, unlike the wastewater, no credit is given for storm water discharged back to the Colorado River System and suggested storage areas be built so that water could be re-used even if it means a method of water treatment. Wetlands may provide a tremendous opportunity for treating and improving the storm water, the wastewater and the groundwater.

Ken Mahal suggested the Commission direct their letter to the elected officials, who make the decisions, of the 4 cities and to the Clark County Commissioners.

Commissioner Doppe expressed concern that the standards considered for adoption do not meet the goal of making all of Lake Mead fishable and swimmable within 3 years.

Tom Porta explained all the standards are currently being met except for e.Coli and we are establishing a database to monitor fecal coliform, even during storm runoff periods, so testing is in place. The Lake Mead Water Quality Forum has established a group that will mobilize when we have a storm event and do some intensive monitoring to answer some of these unknown questions.

Commissioner Johnson moved for adoption of Petition 98005, LCB File No. R062-98 with the agreed changes distributed in the handout and documented language changes.

Commissioner Trenoweth seconded the motion.

David Cowperthwaite, Executive Secretary requested verification of two changes:

Page 4 amendment on line 6 where it says "of the cross-section"

Section 2, Subsection B (2) on page 4 and the verbiage to be continued at the end to read "Not less than 2 samples per month will be taken in the summer"

Commissioner Doppe requested that the motion include the concept of establishing a goal for the Lower Reach to get it back to where it could be, within a 3-year period of time, fishable as a beneficial use.

Commissioners Johnson and Trenoweth agreed to amend their motion and second to add the goal of fishable, by adding the language in Section 3, Subsection 3 to Sections 7 and 8.

Commissioner Molini requested the drafters of the regulation to insert that language where appropriate. Petition 98005 (LCB R062-98) was unanimously adopted.

Chairman Close moved to Agenda Item B:

Petition 98006 (LCB R-063-98), a permanent amendment to NAC 445B.890 (Request for Hearing) by updating the address and zip code of the Commission. Updates to the Rules of Practice are fulfilled in accordance to NRS 233B.050(d).

David Cowperthwaite explained Petition 98006 was a consequence of the March 25, 1998 commission meeting and workshop and the discussion on potential regulatory changes. Those changes were submitted to LCB who responded only with the change of the zip code. The requirement to review our Rules of Practice every 3 years. The properly noticed workshop and the changes submitted to LCB satisfies that obligation. Documentation will accompany this petition when we submit it to LCB for filing, will verify that the Commission has their review requirement.

Commissioner Doppe made a motion to adopt Petition 98006 as presented.

Commissioner Gifford seconded the motion.

Petition 98006 (LCB R063-98) was unanimously adopted.

Chairman Close moved to Agenda Item III. **Settlement Agreements on Air Quality Violations**

A. Mt Hamilton Mining; Notice of Alleged Violation # 1306

Eric Taxer, Compliance and Enforcement Supervisor for the Division's Bureau of Air Quality, explained Mt. Hamilton Mining Company operates a gold mining operation in Ely, Nevada. Their source test report submitted in November indicated that the facility exceeded their PM₁₀ emission limits operating at 20% of their permitted throughput. At an enforcement conference held in February Mt. Hamilton reported the required control equipment on the refining furnace was not installed to meet the manufacturers specifications. That problem has been corrected. Part of their corrective action required them to conduct another source test which is currently being reviewed by the Bureau; Mt. Hamilton was required to submit an administrative amendment to their permit due to changing site conditions at their facility; and an administrative fine of \$3,350 was levied.

Commissioner Molini moved for acceptance of this settlement agreement.

Commissioner Griswold seconded the motion.

The motion carried.

B. Homestake Ruby Mine; Notice of Alleged Violations # 1304

Eric Taxer explained Homestake operates the Ruby Hill Mine Project in Eureka. A NOAV was issued based on the 1997 Fourth Quarter Moisture Content Report that indicated the facility was operating at approximately 25% of the minimum moisture requirement required in their permits. PM₁₀ and other emissions are calculated based on the amount of moisture required in that ore flow and lower moisture content could affect the total site emissions emanating from that facility. During the enforcement conference it was noted the amount of emissions that resulted

in that lower moisture content were rather insignificant - however, Homestake Mine did not report to the Division ahead of time that they needed to reduce that moisture content. Initially, the type of permit issued for the facility is based on what is reported in the permit application, information that affects the processing of the facility's permit. Because the environmental impact was not that insignificant a \$540 commensurate penalty was agreed upon for that violation. Homestake has submitted a permit modification to correct their facility's permit.

Commissioner Griswold made a motion the Commission accept the settlement agreement with the Ruby Hills Mine Project.

Commissioner Doppe seconded the motion.

The motion carried.

The meeting recessed for lunch.

Chairman Close resumed the meeting at 1:15 p.m. and moved to Agenda Item **IV. Non Regulatory Items**

Allen Biaggi, Deputy Administrator for the NDEP referenced a letter sent to the members on April 24, 1998, by Robert Hall, representing the Nevada Environmental Coalition, concerning the operation of the Clark County Air Pollution Control Program. The Executive Secretary determined this is a valid petition to the Commission. Mr. Hall's petition deals with issues related to the Clark County Air Pollution Control Program, specifically regarding pollution credits, fiscal management, records retention, constitutionality and other issues related to program operation. Mr. Hall sent a similar letter to the Attorney General's office for their consideration.

The action before the Commission today is to determine whether to accept the petition and to schedule the matter for a hearing on program adequacy. The issue today is not to determine program adequacy to hear the technical issues contained in the petition but rather to consider the petition itself. This procedure is in accordance with NRS 445B.520. A response to Mr. Hall's petition has been sent by Clark County to each of the Commission members.

Mr. Biaggi reviewed the governing statutes concerning the SEC's responsibilities and the relation with regard to local government air pollution programs:

NRS 445B.500 Establishment and administration of program; delegation of authority to determine violations and levy administrative penalties.

1.(a) "The district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded" gives both Clark and Washoe County Air Pollution Control Programs control.

NRS 445B.500

4. "Any county whose population is less than 100,000 or any city may meet the requirements of this section for administration and enforcement through cooperative or inter-local agreement with one or more other counties" allows counties with less than 100,000 people to undertake an air pollution control program. We do not have any local governments falling into that category in Nevada at this time.

NRS 445B.520 Commission may establish or supersede county program.

1. "If a county required to establish or participate in an air pollution control program fails to do so, or if the commission believes that a program previously approved is inadequate, it shall hold a public hearing. If it finds that an adequate program has not been adopted or that a program has become inadequate, it shall fix a time within which necessary corrective measures are to be taken".

2. "If the prescribed measures are not so taken, the commission shall direct the department to administer an adequate air pollution control program within the county, which shall be a charge on the county, and may supersede any existing county air pollution control program."

NRS 445B.530 Commission may assume jurisdiction over specific classes of air contaminants.

1. If the commission finds that the control of a particular class of sources of air contaminant because of its complexity or magnitude is beyond the reasonable capability of one or more local air pollution control authorities, it may assume and retain jurisdiction over that class in the county or counties so affected.

2. Sources may be classified for the purpose of this section on the basis of their nature or their size relative to the

county in which they are located.

Mr. Biaggi reviewed Mr. Hall's concerns:

Paragraph 1 - Mr. Hall requests an SEC investigation of the Health District for exceeding its statutory authority;

Paragraph 2 - There is a statement of jurisdiction with regards to the Nevada Revised Statutes;

Paragraph 3 - Mr. Hall has referenced the local offset credit program and claims the offset program uses "near money" that is prohibited in the Nevada Constitution;

Paragraph 4 - deals with the offset program and an intention of misrepresentation.

The first concern in this paragraph deals with the legality and wisdom of a one time payment for permanent pollution credits;

The second concern is the offset program is a misrepresentation or a fraud since the credits cannot be quantified and are not surplus according to the Federal Clean Air Act;

The third concern is a statement that "programs are used in a conspiracy to evade federal law";

Paragraph 5 - deals with power to tax and contends the Clark County Health District does not have the power to levy fines, tax or issue near money.

Paragraph 6 - contends that the hearing board is not consistent with Nevada's Constitution;

Paragraph 7 - Mr. Hall states that the Clark County Health District is proceeding on a fuel standard reform program in violation of Nevada Revised Statute;

Paragraph 8 - Mr. Hall alleges routine violations of the Open Meeting Law;

Paragraph 9 - contends that through employee statements and preliminary audit results there has been certain fiscal mismanagement;

Paragraph 10 - Mr. Hall claims information and data is missing from the District's Air Quality Program;

Paragraph 11 - Mr. Hall references the Health District's connection with regard to the SIP and also calls for a grand jury investigation into the fiscal management of the offset program; and finally,

Paragraph 12, item #12 - Mr. Hall indicates that he has asked the Health District to provide certain information as to their legal authority for operations under Nevada Law and the Nevada Constitution.

Mr. Biaggi reported some of the things Mr. Hall is asking for are within the authority of the SEC and some are not, for example the constitutionality issue.

Chairman Close asked for questions from the members.

Commissioner Doppe explained he had a home building business in Las Vegas regulated by the Clark County Health District and he would recuse himself if those involved thought that would present a problem.

Personnel from the Clark County Health District and Mr. Hall indicated it would not be a problem.

TEXT OF THE MINUTES FROM THIS POINT FORWARD IS VERBATIM DIALOG:

Robert W. Hall:

I brought a - first of all, after I filed the complaint - first of all my name is Robert W. Hall. I filed the petition and then I sent to Mr. Cowperthwaite a serious of letters, a stack of letters, and after I did that - and I asked that they be made a part of the complaint and amendments to, additions to - and after I did that I began to realize that this thing was all over the place so I prepared this document which is being handed out to you now which is a summary of everything that we had presented to both the Health District and to the Commission -

Chairman Close:

If there is no objection we will accept Exhibit #35, the marked Exhibit 35, as part out our record.

Robert W. Hall:

The purpose here was to do two things to put it into a more orderly fashion and to give it some more depth where we could to bring it up to date but if because of this document you want to take some time and put off to the next

hearing or something like that, I would understand because it is a fresh document. I divided the complaint into 3 parts - the legal questions, the bookkeeping or accounting questions and the administrative questions. Let me explain, this isn't all coming from me obviously. I am acting as a clearinghouse for a lot of people and meetings are held constantly, more information keeps coming in and I started being a person up in Summerlin Sun City who just had a concern about the air, and I have only been here 2 years, so what happened was as I got deeper and deeper into trying to solve the problem of the dust in the air and I am 64 years old - I've got a lot of business experience, I kept adding up 2 and 2 and getting 5. There is something wrong here. So that's why I am here today is to tell you how we add up 2 and 2 and get 5.

On pages 4- 5 and 6 of this document that was just passed out we have 21 specific complaints which amplify the original complaints a little bit, not necessarily in addition thereto. But I would like to take up the accounting complaints first because this all started when actually another environmental group or other people other than me presented some information to the Las Vegas Review Journal and an article appeared in the paper on December 26, 1997, making several allegations, quoting people within the Air Pollution Control District saying that essentially they didn't have any accounting since day one, the accounts are in disarray and I have since learned that there are some other problems on top of that. Right after that I made a formal request of the Health District to, the Board, to conduct and audit with a nationally recognized CPA firm and ferret out the truth. I can report to you today that they haven't done anything, as far as we know. What they did do was the following: either the Board or the APCD management, we're not sure which, commissioned some sort of a report, audit, study, something from their accounting firm and that was presented to the Board and to the Health District and it disappeared. I have been trying to get copies of it, we have made proper demands, I know that the newspapers have been trying to get copies of it and there was an article that appeared in the paper not too long ago quoting Mr. Rowles, who is an administrative person over there, he said it disappeared. Then they came out with a report. Now the report is a report. When the accounting firm defended it before the Board he pointed out that it wasn't an audit, it didn't have any numbers. Well I couldn't agree with him more - it wasn't an audit but it opined we have found no fraud. Well, if you read it what it says is it is a road map on how they are going to proceed in the future - it doesn't have anything to do with the past. So, my first question from a fiduciary point-of-view is that they have had 6 months to redeem themselves after this December 26 article, which I didn't have anything to do with, and have failed to do so. And anytime government tells me that an audit disappeared they've got my attention big time. So that is why I have started spending so much time with this. I was really concerned when one of the Board members, elected official, pointed to the sentence that said "there is no fraud". It looked to me like somebody pressured the accounting firm to put it in there but they never looked for fraud and there was disclaimers all over the place. So if that is all that they could look at in that report and realize it had nothing to do with the issues at hand then clearly we are in trouble.

Now basically what happened was that I've done a little bit more research, I've checked the State Statutes and where the State Statutes says that "audits must be done according to generally accepted accounting principals" each of these audits are coming in - well, yes, assuming. And then it makes a series of assumptions that you could drive a truck through. I believe that the State Treasurer never should have accepted these audits, I am talking about their annual audits, and I shall so present that to them as soon as I can get to it. I've been pretty busy. But my whole point here is simply this: the offset program, the paving of the roads - which we are going to get into - isn't in the annual audit and involves millions of dollars. It is just not there which I found astounding because they are collecting a huge tax and the people at the county, either through companies like yours or others, and they are dispensing it to various public works departments in various cities and county in the valley and I can't find any authorization or statutory support for this what-so-ever.

I am not going to be-labor the point, I've gone into considerable detail here with regards to these reports but remember, and here is what has been happening, that when these people talk about a report, an audit, or something like that, make sure you ask them if they are talking about the first one or the second one, and why haven't they released it? If they want get me off their backs, so-to-speak, just release it instead of telling us that it disappeared. I might also say that I don't want to be part of the problem here. I want to part of the solution. I made 2 offers to the Board, formal offers, to sit down with them and to try to help them resolve these issues and let's go on and clean up the air. At neither time have they taken me up on those offers. I also held a meeting with some of their top people where I tried to explain from a more general point-of-view what their problem was, that they had programs that simply couldn't be justified.

Now what are these programs and why can't they be justified? Well let's go back to the legal issues. One of the funny things about government and law is that people will do just what Allen did, they will put up a statute here and no one has read the constitution. I'm not arguing with 445B up to the following point. Where it involves public revenue of any kind, in any form, since 1996 you have to go through the legislature and get a vote, two-thirds vote, of each house. That is the law. So, we can argue whether it was grandfather-ed but when you change a tariff you've got a problem. I don't whether it was grandfather-ed or not - I don't know what the effect of 1996 was or not - but I know this, if you do any new ones it would be obvious that you've got a problem, that means you change a tariff and they have changed tariffs. One of the things that they did was take Section 15 out of their local regulations - their SIP actually - and replace it with Section 12. Well, that involves money and that has not been approved by the EPA yet and it certainly wasn't approved by the legislature so all I am saying is that what you've got here is a very interesting organization. The State Constitution says "there shall be one form of civil court" and in talking with the many, many people that get hold of me these days they tell me as professionals that when they go to other states everybody is talking about a circuit court. They are not talking about some rum court run by the Health District - in fact, you go to other states they say "what" for good reason. Would you want your police department controlling the court? That's what is happening here. So a lot of power has been assumed by these people, maybe under 445B, maybe not. If it is under 445B it may be unconstitutional, we're making that allegation, and remember the constitution has to be read as one part - one whole piece of paper - namely the courts - the power to change fines rests with the government and the judiciary - it doesn't - in other words if you are going to mitigate a fine - in the constitution, I don't believe that they have that power. It is clear who has the power. I also admit one other thing - there are some unusual parts to this constitution. I haven't seen it anywhere before - one of them is this business of not putting paper of any kind that acts as money. Well, the definition of near money is anything that is liquid enough that it can be quickly turned into money so we are talking about offset credits and I think that what we need is an Attorney General's opinion as to whether or not I am right on these issues. If I don't like it I can take it to court, which I will if I don't like it, and then we can get one of these issues out of the way. On the other side of the coin, rolling your rule-making operation the people that monitor the dust, the people that go out and act as traffic cops, and your court all in one organization is extraordinarily dangerous thing to do and that is what we've got here. Now the third issue - and I will try to explain it as simply as possible, the problem with local credits, offset credits, and we are talking about road paving and a new plan they've got now on tree planting, is that it has to meet a couple of very important requirements. If, as the Health District says, these things are more strict than federal law I will concede the point that they are home free but the problem is if it turns out that was a misrepresentation then you are evading federal law and that is my opinion and my belief. Now the offset credit program around here runs this way: Basically, you can buy to pollute your neighbor, you can buy credits. There has never been LAER, which is Lowest Achievable Emissions Reduction, ever applied to a stationary source in this valley that we can determine. They don't bother with BACT, which is the next lower level - Best Available Control Technology - very much either. What they do a lot is to get into variable location permits and offset credits and this is, again, not in the audited statement, they had no books on it, we know the accounts are off by at least \$1.1 million and maybe millions and nobody can account for it. What happened also is that one company here in the valley has been getting a contract, and we can't find out if it was ever bid, to pave all these roads around here and they get these huge number of offset credits and they can sell them. Just from this layman's summary, I can tell you that if you are connected they give them to you and if you are not connected you pay for them. So you've got sort of what I call "paylution" where you can pay to pollute your neighbor and if you are a friend-of-a-friend they pay you to pollute the neighbor. The net result is no reduction in emissions. Now that is not the best part. The best part is that all of this road paving was in their SIP, and used to substantiate their SIP to get federal government approval saying that they will be required to come in with a plan where they are going to reduce the pollution and they did that by saying they are going to pave a lot of roads around here. If you turn around and give people offset credits for paving roads you have done it twice and the federal government criticized them on that in both 1992 and 1995 audits, administration audits that the EPA did, saying you can't do that and they did originally in a letter to the District and I don't think that the District is dealing with candor when they don't point that out. So what you are doing is you are dealing - taking credit, twice. Well it is a little wonder that we had days around here when there is a lot of dust in the air because it is all smoke and mirrors ladies and gentlemen, it is all smoke and mirrors. When you get into these programs you find out that there are numbers changing - I will tell you the most miraculous thing I have ever seen outside of church or

wherever, and that is a number in this Air Pollution Control District because if it comes in above a certain point where somebody has to do something it has a miraculous way of changing to just below that number and we are prepared to give you names, dates, places and who did it and how it was done and that means you have avoided public notice, you avoided the application of LEAR, you avoided everything that is important around here and I take some umbrage to that.

So what I am saying, and there is a lot to read here, and so forth and so on, but this whole program, if they got rid of the local variable location permit program and the local offset program and just paid attention to federal law we would probably be in a lot better shape. If they got the court system over to the circuit court, which most states do, and if they have the monitoring to the Desert Research Institute or somebody like that maybe we could start having some confidence in this operation. I think what has happened is there is just too much of friends helping friends and people have lost their compass.

There was one area in there where there was a misunderstanding between APCD and myself - I talked about a two-part program and what I was talking about was road paving and tree planting. And tree planting is the most absurd one yet. I've given you a complete explanation of why this thing is really out to lunch, but anyway, you can't quantify it. First it has to be quantifiable, it has to be real, it has to be permanent, and it can't be a fraud on the government or the people and these programs have never been quantified - they argue with me - well, let's get show and tell time going. We are going to really get to it. I am showing you that these numbers just have no basis in fact. I just want to summarize - I don't like to speak too long - but there was one thing that was said this morning that was kind of interesting, they talk about 7% water. Boy, you are living in another world up there, they do 1.5% down here and call it a substitute for LEAR. Now if you know the law and really stop to think of that one -there is nobody watering down here 7 days a week 24 hours a day. It is all smoke and mirrors.

District Counsel advises them that they are not in violation of the constitution that's self-serving - let me tell you one thing that just shocked me yesterday. I found out that they had Senate Bill 247 a couple of years ago - 1995 and 1996. It never made it out of committee. What it was, was an attempt to legalize this whole thing and the legislature threw them out. Senate Bill 247. And this was fought by the home builders saying "you can't do this, this is an illegal tax". I couldn't agree more. I couldn't agree more. And I understand that there was a, this is on information in belief, that there was some litigation and that there was a restraining order issued. Now I don't know if that was true or not - we're going to dig into that - but it there was that is really a shocker to come down here and say that this thing is perfectly O.K. legally and having had that bill trying to make it legal up before the legislature and then just continuing the program like they had the permission. It is unbelievable really.

At the April 23 District Board of Health meeting Dr. Ravenholt admitted, this is from the paper - Las Vegas Review Journal, admitted that the audit failed to balance the books regarding the issues in the Las Vegas Review article of 12/26. Unfortunately, in April - that was the first audit that they got, not the second one, they didn't even have the second one by then. So he was telling me that he had the first audit and admitted, the perpetrator of that article is right here - I'm sorry, quoting Dr. Ravenholt admitted that it failed to balance the books. These people are getting, the top guy gets \$150,000 plus benefits that I think approach \$200,000. The United States President gets \$200,000. I think for that kind of money they ought to keep a better set of books. I don't dislike them personally, I just think they ought to do a little bit better work. They brought in also as a consultant, that I have no faith in what-so-ever for a number of reasons which I will explain later, doing things that their own staff really has the capability of doing. Why don't they do it with their own staff? Their own staff doesn't trust them anymore - they won't go along with some of these things - it is a total, not total revolt, but there's a revolt within the NPDC. And with those comments I will let them talk. I reserve a little rebuttal if it is necessary but thank you.

Chairman Close:

Are there any questions? Thank you very much Mr. Hall.

Is there anybody else who wishes to speak in favor of the petition? Before -let's get all those in favor of the petition speaking first before and then we'll go to Mr. James Sohns.

James Sohns:

Good afternoon Mr. Chairman, board members. I am James Sohns, President, Nevada Car Owners Association.

Some of you know me, I have been at different meetings and our concern is air quality and air and water quality but

we've gotten frustrated talking, trying to communicate, with Mr. Naylor and please bear with me I hope this will only take a few minutes but I think you kind of see the picture where I am coming from. I have given you a packet of this month's newsletter plus supporting documents on a couple of areas that I am going to cover to back up what I mention and there is some more in there I don't want to, like Mr. Hall says, drag it on, you folks can go through it. It gets frustrating because in 1994 Mr. Naylor, front page of the RJ in December, explained what this visible pollution is in the valley and not being NCOA exhaust, which I think any sensible person knows, but then all of a sudden again in 1998 again now it's from the tail pipes again and I got to agree with a letter that one of my members received from Mr. Doppe. "We have a much greater problem today in the Las Vegas Valley with dust and other particulate emissions than with any of the carbon or nitrogen-based pollutants."

Well, it seems the EPA also agrees on that situation also. And another, it's not ever figured in is the BLM control burns. We keep trying to bring it up as part of these issues. You'll use, which I understand you can use a Mobile6, Mobile6B in the EPA's new model, it seems he says he has got to use Mobile5, we are told he can use Mobile6 - again it is the figures being juggled because Sierra Pacific did a study in the valley using their own figures showed we are getting cleaner and cleaner and will get cleaner past the year 2010 but it seems like Mr. Naylor doesn't like that. It seems like everything is against where he is coming from is not liked. In here I have included, I did some of my own researching because I brought up continually in air quality meetings the pollution factor from the airport. Why are you doing repair programs with vehicles to offset airport pollution and they always the answer is no - there is no pollution at the airport. I bring up restaurants - well restaurants don't pollute either - you know I feel kind of hurt inside, I don't think I'm a dummy, I'm retired law enforcement and been around for awhile plus being Vietnam vet - so I did some researching on the airport and in the packet there the closest I could find to documentation to McCarran Airport which last year had 471,000 landings and takeoffs. Chicago O'Hare Airport in one year time had 383,362 landings and takeoffs produced 1428 VOC's, NOX was 4650 and if you turn the very next page Mr. Naylor gave off this tons per day at the March Air Quality Meeting and he's got 0 (zero). Now how can those aircraft that produce all that pollution in Chicago O'Hare Airport come here and have 0 (zero) NOX. I find that hard to believe. That is why I am saying his staff, and I agree with Mr. Hall, it seems like they go - the next April meeting then you've got 2 tons per day. I mean things keep changing and I've got other ones that go up to 10 tons per day. Nothing is consistent. How can we know where to go if nothing is consistent from the people we are supposed to be working with? I got mad because I knew, on the meat-burning restaurants and that in California, I addressed this and I got no response over and over so I got hold of South Coast Air Quality Management District and they oversee 800 restaurants and I believe there is a lot more in this town than 800 - I know there is 5 in the corner block just right around the corner from me. They have shut down restaurants. The same people in California that own restaurants here they have shut them down or made them clean up in California but yet those restaurants don't pollute here in the valley. Yet I have firemen who are members of my association that go out on fire calls to those restaurants and this is why I want to back up Bob because I get frustrated - it seems like the attack continually comes at the vehicles, that is in my eyes anyway and in a lot of my members, and when you bring up credible other polluters it is just like he said, if they are part of whoever nobody gets attacked but if it is somebody driving a car down the road they don't know who it is, well let's get them and let's get as much as we can. Be fair to all of us. That is all I am asking and that is all I have ever asked for.

Also in there is a list of 47 areas of CO sources which he doesn't include in a lot of stuff.

There is also in there, which we have said for a long time, catalytic converters. Finally the EPA realizes there is a major problem. You can't have them on a car in Europe. Our classic cars don't have them so I guess we must be cleaner but we've been taking all the hits before. So it seems like it is a never ending thing. England has a problem with soot and this is where I feel it is really, government has taken this, and I may be wrong - England has a major soot problem, they are cleaning off the buildings continually and that and they are blaming it on the cars over there they are cutting off driving in the inter-cities because they say it causes that soot. Well excuse me, cars don't cause that soot. But are these people up there that complacent? I don't know what the word is to say.

My last issue, I don't know if any of you have ever heard of Operation HARP. It is now a government operation, it is up in Alaska. There is a 6-page article on it. I'm very concerned and it shows where these different facilities are around the world. It shoots up into the ionosphere and changes weather patterns. Guess who built that in 1994? Arco! - was taken over by the federal government in 1995. Who wants to bring in carb fuel in Nevada? Arco! Who is now brother or co-owner of EnviroTest? Arco!

Chairman Close:

You really should try to keep on the point -

James Sohns:

O.K. - O.K. But the thing is, it seems like everything is directed in Mr. Naylor's direction not what facts are laid out there and incomplete facts. Thank you.

Commissioner Doppe:

If I might I just want to make clear that the quote Mr. Sohns has written in his letter here was part of a letter that I wrote in response to one of your members I suspect -

James Sohns:

Correct -

Commissioner Doppe:

- and she had written asking, I think, my permission on easing or not strengthening auto emissions, basically auto emission standards. Is that the gist of -

James Sohns:

That is the gist because we never get an answer from Mr. Naylor on -

Commissioner Doppe:

Let me make sure I put this quote in context of my whole letter -

James Sohns:

O.K.

Commissioner Doppe:

- because what I told her was I believe we had a bigger PM₁₀ problem than we have carbon monoxide problem and I thought we were making progress on that but I also went on to state that I would not support any easing of carbon monoxide restrictions and would actually look to strengthen them when I had the opportunity. I wanted to make sure that I got that out there.

James Sohns:

Yes. No problem - I fully understand that from the last meeting. I just wanted that point - you know - thank you.

Chairman Close:

Anybody else who wishes to speak in favor?

Jessica Hodge:

Hi. My name is Jessica Hodge. I work for Citizen Alert here in Las Vegas and we are a non-profit environmental group that has been working in Nevada for about 23 years now. In 1996 we formed the Clean Air Alliance with some groups in the area to work on air quality problems. As we found out, we have some of the same concerns as Mr. Hall and we believe that some sort of investigation needs to be made because we are concerned about the air and we want these problems to be resolved. There are a couple of things in particular that we are concerned about: Grandfathering of sources; issuing Authority to Construct before public notice; maneuvering around federal clean air requirements using - going around LEAR and back which Mr. Hall spoke of earlier; a conflict of interest in the monitoring and data - the same that are doing the enforcement are also doing the monitoring and the data; ignoring a request for documents; fouled emissions reduction program and favoritism; and a lack of a comprehensive emission inventory. We really haven't seen one in many years and I think this valley is changing so quickly that is something that should have been done a long time ago and should be done on a yearly basis. So we want to support a SEC investigation and I would appreciate it if you guys would take that into consideration. Thank you.

Chairman Close:

Thank you very much.

Mr. Sohns gave us a handout that is marked Exhibit 34. If there is no objection we will make that a part of our record.

Is there anyone else in the audience who wishes to speak in favor this petition.

If not, those who oppose it. I have Mr. Naylor's name down. Do you have someone else who wishes to speak with you or before you?

Michael Naylor:

Good afternoon. My name is Michael Naylor. With me is our legal counsel, Ian Ross. We have some other members of the Health District here today: the Chief Health Officer Dr. Don Kwalick is here, the Assistant Air Pollution Control Director, Mike Sword; our Administrative Officer, David Rowles; and also with our Hearing Board, the Chair of the Hearing Board - she is not a member of the Health District - and that is Ann Zorn. We also have a former Chief Health Officer here, Dr. Ravenholt.

I would like to high-light some items in the letter that we sent to you last week in response to Mr. Hall's letter of April 24.

Chairman Close:

David, did you mark that as an exhibit?

David Cowperthwaite:

I marked that as Exhibit A.

Chairman Close:

If there is no exception we will make Exhibit A part of our record.

Michael Naylor:

Our Director of Environmental Health is here as well and that is Clare Schmutz.

If you have that June 10 letter I would like to pick up on, to cover some areas that Mr. Biaggi did.

First of all we are recommending that the Commission not accept Mr. Hall's request because we think the Air Pollution Control Program is in good shape, there is always room for improvement, but we think it is doing a good job. We believe the air quality is getting better and that we have contributed to that improvement.

Some of the basic provisions of the NRS are that - the purpose of NRS 445B is to achieve and maintain levels of air quality which will protect human health and safety; preserve visibility and scenic, and aesthetic and historic values of the state.

The intent is to require the use of reasonably available methods to prevent, reduce or control air pollution throughout the State. It includes facilitating cooperation across jurisdictional lines in dealing with problems of air pollution not confined to a single jurisdiction. The powers of the Commission which are also delegated to the Board of Health include establishing standards for air quality and establishing such requirements for the control of emissions as may be necessary to prevent, abate or control air pollution.

Mr. Biaggi, I think, noted the powers of the Environmental Commission in this area are also delegated to the District Boards of Health who have a local air pollution control program. In the Clark County case the local program is governed by the Clark County District Board of Health. The Board meets on the fourth Thursday of every month. Each municipality appoints 2 members to the Board. The 11th member of the Board is appointed by the rest of the Board. Currently, 7 of the appointees are elected to their respective County Commission or City Council, consequently, the majority of the members of the Board currently are elected public officials.

As with the Environmental Commission, there is opportunity for citizen participation at each Board meeting.

Furthermore, the Air Pollution Control staff provides a written and a oral status report each month. This report is mailed to approximately 120 persons including Mr. Hall.

For this upcoming fiscal year the Air Pollution Control Division will have 51 authorized positions with a budget of approximately \$3 million. This is an increase from 31 positions in 1995.

Over the years the Board of Health has adopted numerous regulations to achieve and maintain levels of air quality and to require reasonably available methods to prevent, reduce, or control air pollution as provided by the statutory authority.

Notices of all the public hearings are routinely sent to the Division of Environmental Protection as well as several hundred interested citizens.

Is the Health District doing our part to improve the air quality? One measure of air quality, if we are doing the right thing, are the trends in air quality. Attached to this letter are some graphs illustrating the trends for particulate matter, ozone, and carbon monoxide. In the case of ozone, the valley - in fact Clark County has been in attainment of the ozone standard since 1985. In recent years the ozone levels have been staying approximately constant but they are in compliance. Carbon monoxide and particulate matter have both been dropping in recent years.

There are reasons why these programs are reducing carbon monoxide, ozone and PM₁₀. I would like to highlight some of these. We have penalties for dust control, emission limitation permit violations and we anticipate that for this year total penalties will be \$300 thousand dollars. The minimum penalty of \$1800 for a dust violation is the highest in the west. We have the strictest oxygenated gasoline program in the United States for controlling carbon monoxide - a minimum of 3.5 percent is required and that has been dubbed an ethanol mandate. The District has been sued by the Western States Petroleum Association over this.

We offer emission reduction credit as an incentive for road paving. Over 35 miles have been paved through this credit program. This has reduced PM₁₀ by over 2,000 tons per year. Each paving of 1 mile of road qualifies for 238 tons of credit and each credit has a market value of about \$400.

We require the recovery of vapors from gasoline stations. This is typically required in areas that are in non-attainment for ozone but it is not common in areas that are in attainment for ozone. Our Board of Health adopted the vapor recovery program in 1990 as an insurance measure for ozone compliance.

We have an emissions offset program. Every new and modified source that receives Authority to Construct must reduce existing emissions occurring in the valley. For every ton released it must provide 2 tons of offset or emission reduction from other sources and these reductions are processed as emission reduction credits.

We have assessed recently over 5,000 tons of offset for calendar year 1996 and earlier. There is a statement here where it says "over 5,000 tons of offset for calendar year 1996. That should be calendar year 96 back through calendar year 95, excuse me, 93. So that is for several years, but 5,000 tons were assessed for that time period. The collective cost for permittees to acquire credits to meet these offsets is approximately \$2 million.

We require dust control permits on every project exceeding a quarter of acre. We have a lot of growth in the valley, a lot of construction, there are now approximately 1500 dust control permits covering an aggregate of 18,000 acres. We have new additional rules for reducing dust from construction sites such as information signs, these are 4x8 signs that you can see at all the job sites in town and a 4x4 on a smaller one.

Gravel aprons are required at egress points to the paved roads and that prevents the track-out of mud.

We are now requiring dust control classes for superintendents of the construction sites and for violators. Over 1,000 construction site superintendents and employees have taken these classes.

Fees of \$87 an acre are charged for each acre of construction activity. This provides revenue for our dust control enforcement officers. Approximately \$1.5 million are the fees estimated for fiscal year 97-98.

To assure rapid processing of our violations the District has a hearing officer system and that way a case is not more than a month old by the time a hearing office determines whether a violation occurred and sets the penalty.

Finally, starting in the early '80s we focused our attention the emissions of chlorine and other toxic gases in the BMI Complex near Henderson. We found the chlorine reductions, by achieving the chlorine reductions the area came into compliance for ozone and some special research by the District helped shed understanding on the relationship between chlorine emissions and the formation of ozone.

I would like to mention briefly we have grants through DMV and through EPA. Those grants involve the participation of the state, the Division of Environmental Protection reviews the grant that request funding from DMV and we routinely meet with the DMV's Emissions Maintenance Committee and that has other state and local agencies participating. With our grant for the Environmental Protection Agency we act as the local EPA agent. All those progress reports are routinely sent to the Division of Environmental Protection.

We have a State Implementation Plan for handling the approval of new sources and this Implementation Plan now includes our Offset Program and our New Source Review Program. These regulations are sent to the state for

transmittal on to the EPA.

I would like to discuss Mr. Hall's specific concerns that were raised in his letter of April 24. First he talks about the two types of local offset programs and he has explained this afternoon that he was referring to the paving of roads and the tree program. These are types - these are programs that apply to the so-called non major sources and we also have provisions for industrial process improvements, industrial shut-downs, a gasoline station vapor recovery and a road paving. So we have a number of ways these credits can be earned. These local offset programs are required by the Clean Air Act for new and modified major stationary sources of air pollution. Where we depart from the norm is that we require these for minor source. The Clean Air Act does not require emissions offsets from minor sources whereas the District does and I think he agreed that our offset programs are stricter than those established by the state. He claims that these are a scheme to evade federal and state law - the District cannot and will not evade state law. We are a public agency whose records are open to the public. Mr. Hall has not supported nor documented his claims. The offsets must be quantifiable and surplus in order to have federal legal status. He claims the District's offsets have neither. These offsets are quantifiable and surplus. To be quantifiable there must be a specific numerical benefit from the emission reduction action. For example, our District emission credit regulations establish a formula for planting of trees or paving of roads. These formulas are derived from empirical evidence supplied by EPA or the technical literature. To be surplus the reduction must occur from a voluntary action. The reduction cannot result from any requirement, ordinance, order or prior mandate or be funded by government grant. Even though these credit options are quantifiable and surplus, they do not have to have federal legal status. This status is required only for credits used to offset emissions from major sources. The road paving credits and the forestry credits are not required for sources that EPA regulates as major sources in the non-attainment area. EPA acknowledges that our road paving programs and forestry programs are only used for sources not subject to the clean air act requirements and EPA has accepted this program for a number of years.

Mr. Hall alleges that the offset programs are a misrepresentation or fraud. In this area Mr. Hall's opinions were additionally considered by the Board of Health at a public hearing on amendments to the offset rules in April. The credits for the trees should be considered permanent since Boulder City would commit to permanent maintenance of the trees planted with funds from the offset program. He has said that because they cannot be quantified they are a misrepresentation. We find again that these claims are not supported or documented. The programs are quantifiable surplus and substantiated. These issues were recently reviewed by the accounting firm of Stewart, Archibald and Barney. A copy is attached. That report was submitted to the Board at its May meeting and it is attached to your letter today.

He alleges that this is a - these programs are a conspiracy to evade federal law

this is a comment - an editorial comment by Mr. Hall. By using the term polluters he implies facilities are not in compliance however strict enforcement is applied to all facilities not in compliance. The Hearing Office system and the high penalty experience cited above testify to this. There is no conspiracy.

On the issue of fuel standards, Mr. Hall says that we have been proceeding on fuel standards reformed program in violation of NRS and Mr. Hall did make some reference, or Mr. Sohns has made some reference to reformulated gasoline. The District has not adopted any regulations for reformulated gasoline. To gather public and industry input we are holding workshops on this matter consistent with the provisions of NRS 445B.505. Mr. Hall has been sent the agendas for these workshops.

There is the question of where is the money? Supposedly Health District employees have admitted there was no accounting for programs involving millions of dollars. We deny this. The Health District employees have always spoken openly and candidly about their duties and responsibilities. A concept that there is no accounting is a misunderstanding at best, or a fabrication at worst. In any event, this statement is not true. He refers to some statements by Dr. Ravenholt at the April 23 meeting. This is a mis-characterization of some statements made by Dr. Ravenholt at that meeting. That matter was reviewed rigorously by the Board at its meeting in May. And again, a copy of the report from the accounting firm has been attached for your review.

It is alleged that critical data stored on the District computers is now missing. This is not true, a number of data bases are utilized on District computers and their integrity has been maintained.

There are other comments that Mr. Hall made at our, of a legal nature or of a constitutional nature and I believe Mr. Biaggi suggested those areas might be either subject to the Attorney General or some other group and they would not be in your purview so I have not talked about those.

I would like to add that behind the letter are the graphs on the air pollution trends and then attached to it is a report from Stewart, Archibald and Barney.

Are there any questions or clarifications?

Chairman Close:

Any questions from the Commissioners?

Commissioner Coyner:

Mr. Chairman, are we going to wait until all those on that side speak in regard to the petition or ask questions as we go along.

Chairman Close:

I think those in favor of the petition have spoken and now we are getting those opposed to the petition are speaking and we will wait to see if there is anybody else wishes to speak besides Mr. Hall -

Commissioner Griswold:

Mr. Naylor -

Chairman Close:

- and then we will see - Mr. Naylor - and then we will have response and then we will -

Commissioner Coyner:

If we have questions regarding the Stewart, Archibald Barney for Mr. Naylor can we ask them now or -

Chairman Close:

Yes.

Commissioner Coyner:

Mr. Naylor you attached this accountant's report from Stewart, Archibald Barney and I notice it is dated May 27, 1998 so it is fairly recent. Since you didn't take the time to go over what they said I would like to give you the opportunity to talk about their recommendations and findings - did you take any action on those and then what your time-line might be with regards to complying with some of their recommendations. I am not asking particular questions but also out that audit I prefer that you just discuss it in general. Are you satisfied with this audit and do you believe it to be fair and adequate?

Michael Naylor:

We believe that that's fair and adequate - we have had some difficulty implementing the offset program, there was a time period when assessments were not being sent out, we have had some changes of staff and also augmentation in staff so there were some rough spots in that program that need to be corrected. The accounting firm has provided a lot of insight into the areas that should be corrected and all their recommendations are agreeable to us and we have implemented already all those recommendations or we are in the process of completing the implementation of those recommendations.

Commissioner Coyner:

Do you feel them to be accurate, on page 6 in their findings, when they talk about situations where 15 of the 39 permits, documentation to support the assessments made was missing from the files? Is that an accurate statement or an accurate finding - are they not being complete in their assessment there? I look at these findings, there are 4 major findings here and we are talking about anywhere from roughly 25% to 1/3 of the permits having defects - 15 of 39; 10 of 39; 13 of 39; 10 of 39 - especially finding some sort of problem. I don't know if these are major problems or minor problems because I am not acquainted enough with the program. My sense is that they are fairly serious. If I was to look at my Division of Minerals and find out that on our check list of things that we deal with

that we have this many discrepancies I would be a little bit concerned. Obviously again, May 27, a fairly new report. You haven't had time to respond or to put systems in place to fix these findings and they do make the recommendations on how you are going to do that and you alluded to the fact that you have begun to look at that and trying to look at these findings and put systems in place and I guess I am looking for assurance that we are going to see that. First of all, are these serious or not serious or just minor bookkeeping errors -

Michael Naylor:

They are issues of concern - I wouldn't - I'm not sure if they are major or minor. We have since then are finding ways to recover the missing documents so of the 15 of 39 documentation of permits, documentation to support those assessments was missing, we are recovering those by talking to municipalities with whom the documentation started so we are finding those and in the meantime we have improved our procedures to make sure that this whole data system is kept integrated and that we won't be losing any documentation but those are accurate statements as of time as to what was missing.

AG Jean Mischel:

On the same report, on page 4, documentation of approval for certificates of credit issued - "only formulas in the regulations should be used in the calculations" I don't see a correlation to the findings but is that a noted problem in the -

Michael Naylor:

There were some credits calculated using a formula not in the regulations it was for short segments of road where a higher, they used a higher traffic count than the old rule recognized. That formula has been amended to account for short segments of high traffic counts. So at the time, last year there were some credits issued without a formula in the regulations but the regulations have since been modified to address that.

Chairman Close:

Any other questions?

Mr. Naylor how do you determine which roads are to be paved and where they are located.

Michael Naylor:

There are two general methods. The primary method is that the public works departments in the valley identify to us roads that have significant traffic counts and that there is a need to have those roads paved. The public works departments traditionally do not have funds themselves to pave these gravel roads in the periphery of the valley so they will give us a list of the roads that are on their priority list. There are times when a contractor or developer is aware of a road near one of their projects that there are no plans for paving it but because it is near one of their projects they offer to pave it even though they are not required to. But the basic criteria is that there has to be no commitment for paving of a given road or no mandate to pave that road then if someone voluntarily paves it they then earn a credit.

Chairman Close:

Any other questions for Mr. Naylor?

Commissioner Johnson:

You say that there isn't a plan to pave the road but it seems to me that implementation of this program openly invites any developer who would have plans and how do you document that intent? If they pull a building permit or paving permit or construction permit somewhere it seems to me that this is an open invitation to simply pass off for credit something that would have been done in the general ambiance of the development and they are their documental criteria that planning agencies use to determine whether the traffic count or the development that is going to be approved would have to pave the road.

Michael Naylor:

We rely on the information from the public works departments on whether or not there is any pending development that may require paving of that road because the public works departments are all directly involved in all those development projects so we get their input on whether or not that developer would have had to pave that road anyway and if they would have had to pave it then there is no credit allowed.

Commissioner Johnson:

Is there an absolute - is there a traffic count or in some cases, and I don't know how they do it here, they require half roadway development - any number of things that there would be a dis-incentive for a developer to make whatever that cut is, he would go up to that, back-off slightly, and then come in for revision after he has earned his credit and I simply see that there is no really way of for you to see, nor the planning department to evaluate the criteria for achieving this offset.

Michael Naylor:

The traffic count data is collected ahead of time, usually under the auspices of the public works departments -

Commissioner Johnson:

What you mean that this Mobile5, Mobile6, is -

Michael Naylor:

No, we are talking about putting a pneumatic tube out on the road with a meter and measuring -

Commissioner Johnson:

No, that is for crediting for how much credit you get for paving not whether for if you plan to pave it or not.

Michael Naylor:

I'm not sure I quite follow the -

Commissioner Johnson:

When you are evaluating this you determine that there is no one obligated to pave it then you rely upon the traffic count. What I am saying is if you are in an area as a developer you are going to run your Mobile5 or Mobile6 and say "oh well, I am going to plan 30 houses instead of 40 because it will cut me under the cut-point and then I can come in after I get my paving offset and apply for the other 10 and there is no way in this system of evaluating to prevent that from happening.

Michael Naylor:

Well the builder building a custom house can trigger paving requirements. It generally does not, its at a powerful map level but a developer building a custom home is required to pave access to their home and there -

Commissioner Johnson:

Then I don't see - if one builder of one custom home is required to pave that road out there then where is this intent? On only roads where there is no application for building?

Michael Naylor:

That is correct. These are existing homes that have occurred that maybe in the past they should have paved but they got a waiver or an exemption from paving but we have areas, communities

Commissioner Johnson:

And there are no sites in that area - no already total build-out?

Michael Naylor:

These are areas where there is no new construction happening, they are not necessarily built-out, there might be

vacant lots but there is new construction projects that would result in road paving.

Commissioner Johnson:

I see. If I am going to plan on building on my one lot I can go beforehand, pave some of the land, get my credit, now I've got a paved street and I get by this thing. It is just a matter of coming applying for the offset before applying for the building permit.

Michael Naylor:

There are probably some ways to abuse the system and perhaps that could happen.

Commissioner Johnson:

Well I assume that it does happen.

Commissioner Coyner:

As a follow up to Mr. Johnson's comments. You do a little math in Mr. Naylor's summary here in the front in regards to road paving - 238 tons, 35 miles; 8300 tons, \$400 and I am assuming 400 constant is the value as it fluctuated at the time which represents 4 years - 5 years of programming here, that is \$3.3 million dollars so that is the sum of money that is the consensus of Mr. Johnson.

Michael Naylor:

We were indicating 5,000 tons had been assessed for recent year emissions and the market value for each ton is \$400 and that resulted in \$2 million dollars, the value of our recent assessments.

Commissioner Coyner:

I was just using the number you provide in your letter, the 35 miles qualified for 238 tons of credit times \$400.

Michael Naylor:

The 238 - the benefit is figured for a 7 year period so the 238 tons represents the fact that there is a reduction of 34 tons a year for 7 years. So you might be factoring that in possibly.

Chairman Close:

Any more questions?

DAG Mischel:

Mr. Chairman, just to clarify. Mr. Naylor mentioned there was so many -

Chairman Close:

Jean, does that microphone work?

DAG Mischel:

Is this - O.K.?

Many of the issues brought up in the petition that Mr. Naylor did not respond to are outside of the authority of this commission and those relate to whether or not 445B.520 is constitutional or the whole system. Those matters need to be decided by the courts of if someone can convince a legislator that there is a problem with the legislation they of course have the authority to amend it but this body needs to follow the statute, period. You are authorized only to the extent that the statute give them that authority. In addition to those questions there were some open meeting law questions that are outside this Commission's authority, the public record questions as well as the tax question. This Commission is authorized to determine the adequacy of the pollution control program as it relates to public health, safety and welfare.

Robert W. Hall:

I already find that -

Chairman Close:

Just one second. Jean, is it legal to - what are our alternatives that are available to us today.

DAG Mischel:

As Allen has mentioned, statutes under 445B.520 anticipate at least a 3-step process. This is the initiation of a potential hearing on the adequacy of the Clark County Program. The notice as well as the process that we are initiating is not in the form of a contested hearing but in the form of discussion at a public meeting to determine whether or not to go forward to a contested hearing where you bring specific evidentiary pieces such as documentation of some of the permits themselves, witnesses, - it would be, I would anticipate, a very expensive hearing given Clark County's history on this program and numbers of permits being issued. Today, the Commission has the opportunity to either determine if there is insufficient evidence to cause you to believe, and I'm using the statutory language, to believe that the Clark County Program is inadequate and close the matter at that level. If there is sufficient questions as to the adequacy of the program the Commission may schedule the matter for hearing or direct the Division to conduct further investigation and continue this particular matter to the next meeting or beyond. There are really three options:

- 1) to dismiss the petition with an express finding that there is insufficient information to cause the Commission to believe the program is inadequate;
- 2) to continue the review of the petition following some further investigation. Now we have not heard from the Division specifically and I'm not sure whether they are prepared to provide a complete analysis of the petition and response - I imagine this is the first time they have looked at this report and things of that nature - and the next option
- 3) to schedule the matter for hearing and the hearing would, the next step at the hearing level would not be to supersede the program even if there was a finding that the program was inadequate but that there would be a program for corrective actions scheduled if the hearing resulted in a finding against the Clark County Program.

Chairman Close:

Thank you. Any questions for Jean before we move on? Mr. Hall do you want to make a comment relative to some of these comments - please take the microphone.

Robert W. Hall:

I think you missed a step there. Any division in the state, the attorney general's clients are the divisions of the state and clearly if I was running this operation I would immediately go to the attorney general and ask for an opinion because I want to know where I am and I don't think you talked about that but you can get an attorney general's opinion and it might well be something you want to do for this reason. Let's suppose, God forbid, that I am right. Then all of the people that have paid into this little slush fund have a right to get it back. I would get an opinion real quick.

A couple of other items. You mentioned audit. On their own cover they talk about reports. When the senior person in the accounting firm stood up at the Health District meeting he made it clear that he was not talking about an audit here and all of the disclaimers in this thing make it clear. It says "solely to assist in evaluating the design of implementation of accounting procedures of the air pollution control division" - that is in the future - and he stated, and I was sitting right there when he did it, that this thing does not have numbers in it, it has a couple but, he said "an audit is full of numbers" and I am glad he said that because that was no audit and it certainly was not -and I would like to point out the following things that he didn't say, Mr. Naylor did not say. First, there was no discussion about the past money. He is talking about what he is going to do in the future. We are talking about, we want to account for the past money - I think it was a terrible omission for him and second, he admitted that the documents are missing. That is astonishing. He didn't talk about double accounting and I can tell you this is real serious in the federal level. If in fact they double accounted they've got a problem because what they have

done is tell stories to EPA in order to get an SIP and he talks about strictness and this is the key to the whole thing. I talking about being more strict it is O.K. if you are but if you knowingly and willfully conducted a program that was less strict I sure as hell wouldn't want to tell that to a federal district judge because what you have done then is to conspire to evade federal law and that's what this layman, a pretty well educated layman, sees here but this is my opinion and my belief.

DAG Mischel:

Mr. Chairman I was remiss in not mentioning the criminal tones of some of the allegations in the complaint - of course this body does not make criminal determinations and those would be more appropriately directed to the district attorney.

Robert W. Hall:

I am just trying to save them from themselves, that's all.

Chairman Close:

Does anyone else wish to testify in this matter?

Commissioner Molini:

I know that our counsel mentioned the Division's potential role here and it is not my intent to put them on the spot or anything but I don't want to let Lew off too easy here in his retirement years but certainly there is kind of an oversight role, or it appears to me there is, played by the Division when these delegations of responsibility for air quality rests with the counties and I would be very interested in comments from the Division about this whole allegation on the District Health Department and the Air Pollution Control Division. In the Division's oversight and working with these folks do they find there to be problems or inconsistencies or areas of major concern? I guess I would ask you Mr. Dodgion and if you have other staff that is more appropriate that would be fine too.

Lew Dodgion:

I know you did not want to let me off the hook so I will step up here for a minute. The Division's oversight role with respect to the two county health districts, Clark and Washoe County Programs, is very limited because their authority is set in statute and Allen showed it to you that said in these counties with population over 100,000 they shall do this. The oversight role is really with the Commission and the exercise that you are starting to go through right not. We do review their submittals to the Federal EPA and certify that they are consistent for incorporation and becoming of the SIP, which is the State Implementation Plan. We have done - so we are not exercising an oversight role and a review of this program and this offset program that is in question here. And we haven't done any investigation as to the validity of the allegation. And in keeping with, I say the authority and the jurisdiction is the Commission's, you can, as Jean indicated to you, direct ask or ask us as the Division to do an investigation and come back with specific recommendations, specific findings, you know as a third party involved here, where we could sit down with each of the parties, we could go into records, we could do an investigation and come back and tell you what our findings are and then you could make a decision as to whether you wanted to go forward with the contested case hearing. I guess I would recommend that course of action.

Commissioner Griswold:

Lew, have you reviewed an annual audit of any kind of the numbers involved?

Lew Dodgion:

We have not.

Commissioner Molini:

All right. Thank you.

Lew Dodgion:

I should add that Mr. Biaggi would be "happy" to -

Allen Biaggi:

Well done! Well done!

Ken Mahal:

I am Ken Mahal, President of Nevada Seniors Coalition, also retired architect. At one time I had 650 architects and engineers with the eighth largest firm in the United States that practiced in all 50 states, the U.K. and in Saudi Arabia. I know a little bit about health concerns because as a registered architect in all 50 states that is how you hold your license. I moved here in '83 and it was pretty decent for about 3 years and it has gone down hill ever since that time. And I was the lone voice on air quality until about the last 4 or 5 years until we got together with Rick Nielsen and then Bob took over.

Let me give you a couple of things that have been totally overlooked here. Mr. Naylor says they have about 1600 permits out, I was going to say 14 but 16 is fine. Let's say on average half of those permits are active and these permits would have some reason to have dust control provisions. I have watched this enough to know that at any given time, by-and-large, these permits will have track out, equal to about a mile, to a black-top road so you mean to say there is 800 miles of dirt track out at any given time in this valley over the black top. I don't even care if you say it is 400 miles. What the offset program does is 35 miles. Until about 3½ years ago, 4 years ago the pollution department at times had fewer people in enforcement than Clark County had in 1972 and in 1972 they had 3 people. There were times here in the last 6 or 7 years they had no more than 2 people. How can you enforce the rules and regulations set down by the federal laws and state laws and the county laws with such enforcement? These are great concerns that we have had every since we have been tracking these issues.

Another interesting thing is, the last I noticed, they had on average about 700 telephone complaints a month about particulates either in the air or on the road. They handle about 10 violations a month and sometimes those are carry-overs. So if you figure that out on 700 complaints that means to say that less than 10 of those are legitimate. We think not.

So I urge you to listen to what Mr. Hall has said. It is more serious than you think. I have spent my entire career in the design and construction business and this is the dirtiest air I have ever seen caused by carelessness of two things, dust particulate and dirty vehicles and there is now need for either one. I give you one example. In my neighborhood for six months there has been a project being built. I got tire of calling. I could have called every day because of the track out on the road. Guess what? They were never fined once. The permit board would be down, I would call, nothing would happen for weeks. My contention is this sounds like a very good story because they write a lot over in the pollution department but if you've got a serious, real actions, you would find out it is much like Mr. Hall has said and a few of the things I have related to you now and at the free time I will give you a real example of what we have been faced with ever since we have been here. Thank you. Well Robert just said Michael took credit for El Nino. Good for him, I mean whatever he can do to win one I am in favor of that. But I am concerned about the health of the people that live here. I have never in my life had the health problem I have had for the last 5 months of this year. Thank you.

Chairman Close:

Any other questions.

Commissioner Doppe:

Before you close the public hearing I have a couple and I might want to ask some more. O.K.?

First of all, can I ask Mr. Biaggi to put the NRS provision back up on the screen so I can take another peek at it?

Allen Biaggi:

And we have hard copies.

Commissioner Doppe:

We have heard a lot of comments and criticism of the operations of the Health District and the reason I want to look

at this again is because it flashed up there the first time and even in my unfamiliarity with it, it strikes me that with the exception of a certain very narrow criteria we are not the governing board. We only become the governing board when it is deemed that the local program is inadequate. Alright? So to me what that means is that we are not the ones to complain about with regard to management issues unless they can be proven that they are showing that is caused an inadequacy to exist inside the program. So what it really comes down to me is can we use our judgement to determine that what the Clark County Health District is doing is inadequate. And if we can do that then we have, or even if we feel that way I suspect, we would have cause to ask that the Division get involved and start to ferret this thing out. And if we can't do that then I guess we lack the evidence that Jean said that we would require to move forward and I - never-mind the fact that there are all kinds of allegations with regard to management practices, fiscal accountability and all that stuff which I don't have any information on so I can't begin to comment on those. What I want to do is I want to hear from the folks - the district and Mr. Hall - on what your position is in regard to the results that we are seeing. PM₁₀, carbon monoxide, ozone and the others - where are we, where do you think we could have been, where do you think we could have been or should have been, so we can start to get some information on whether or not the Health District is doing the job that they are supposed to do with regard to adequacy and I call upon Mr. Hall to start.

Robert W. Hall:

We are in a nonattainment area, period, for carbon monoxide and PM₁₀. That cannot be denied and it is serious and these people, their answer, when EPA came down and said "what are you going to do about this" was to ask for a 5-year extension. I will personally guarantee you what a bureaucracy is going to do. There is no way they are going to give them a 5-year extension and if they do we will file the same action Phoenix filed, take them to the Ninth Circuit and you will get the same answer. When Phoenix got their 5-year extension the Ninth Circuit slammed-dunked Region IX EPA because there was no reason to give them a 5-year extension so that is the serious matters that we are talking about here. There is another possibility here too and that is we take a friendly case into court for declaratory judgement on just what are the legal situations here. Again, I come from a business background I don't come from a governmental background but I can say this, there is a financial risk here and it seems to me that you want to clear this thing up as quickly as possible and I think you could get together with your legal counsel, the Attorney General's office, and arrange that be done, that we all march into court and say we've got this gray area here, even they admitted it was a gray area because when they put out that Senate Bill, 247, they were trying to clarify a gray legal area and they didn't get it clarified. So to march ahead, and incidentally, in this tree-planting thing they are going to give permanent credit. Let me just tell you from a business standpoint, no-body in their right mind gives anything permanent because you are tying down future generations but that is what they are going to do. You've got to watch these people.

So to answer your question I think the legal thing is critical but let's suppose we dispense with that - that we don't address it. The answer is you've got 24 specific allegations. In the back of this document, on specific companies, the only thing I did was to remove the names at this specific stage of the game however we are ready to put these names back in and these are very specific charges of wrong-doing here, very specific.

Chairman Close:

What page are you referring to?

Robert W. Hall:

Pages 30 through 36 - and let me tell you this didn't come from Bob Hall this came from people who had first-hand knowledge of this information. So you can go ahead on these charges here, these allegations, and find out if these people are capable of doing their job under any set of circumstances. And I hate to say that but, and I am willing to sit down with these people - I'm not mad at them, I hope they don't get too mad at me -but they've got to show us, it is time now that they showed us that they can do this and I want Michael to explain to me how he changes something with a limited 15 and it comes 14.5 all of the time. If he can give me a plausible explanation I will give him an apology but we are worried about it. There is plenty in this document, I'm embarrassed to say I'm a volunteer, I don't get paid for this - I got it done as quickly as I could but you need time to read it and absorb it and I understand it. Does that answer your question? Do you have enough in this thing excluding the legal things. Even

an audit. You've got the treasurer involved, the State Treasurer involved, he is supposed to review these audits and how the hell he is accepting these things - I -

Commissioner Doppe:

I guess it doesn't satisfy me though because I come back to the concept, how do these things translate into inadequate performance and that is what I need for you to -

Robert W. Hall:

Double accounting -

Commissioner Doppe:

Double accounting, triple accounting, lost audits, this and the other thing - is a management issue that you have a legitimate right to ask those questions but I don't know if you have the right to ask them of us.

Robert W. Hall:

The answer is who is in charge. If you are not in charge we really got a problem.

Commissioner Doppe:

See, I don't think so. I think we are charged with the responsibility of determining whether or not they are doing an adequate program. I don't know that we are charged with the responsibility of determining whether they are management practices are fine or not. All we need to look at -

Commissioner Griswold:

Are they doing an adequate program if their management practices are inadequate?

Robert W. Hall:

You've got the power to take back the power. In other words, you can run this program under the law and that is what I am asking you to do. I am saying that they haven't showed me yet that they can run this program to the point where you shouldn't take it back and I am not just talking for myself one of these days you will know who we are talking for and it is a huge number of people.

Commissioner Doppe:

And again, I don't have any information Mr. Hall, so I can't comment on that but let me talk about CO attainment. We are not attainment of CO yet we have shown steady improvement for the last 10 years. And so my question to you is -

Robert W. Hall:

Now wait a minute. They did that through fuel, designing cars and a lot of other ways and we're not arguing about CO so much here, frankly we are much more on a PM₁₀ situation but that sort of thing is sort of like taking credit for El Nino, incidentally, I would like to find out - he has been under a lot of local political pressure to clean up his act and there has been some improvements, I would be willing to admit that, but it was because of us on his tail, yapping at his tail, that is how it happened. It did not happen out of the goodness of his heart.

Commissioner Doppe:

And that may well be and believe me, I appreciate the role you play. I think we need groups like yours to make sure the public groups are doing their job but I keep coming back to - let's talk about PM₁₀. I am not happy about PM₁₀ levels but they are better in 1997 than they were in 1996, they are better in 1997 than they were in 1995.

Robert W. Hall:

Let me answer your question. You are responsible for this State Implementation Plan, Lew said that. If they've got a phony plan you've got a big problem and I am saying you've got a phony plan. This whole thing of eliminating Section 15 and going in at Section 12 - I could speak volumes about that. You are talking about a shell game and

smoke and mirrors, I mean this thing is all over the place. When we get into it I suggest you get a long table and put them on one side and let's put our team on the other side and you are going to get an earful because we are going to come in with names, dates, places, facts, and show just how they did these things and it is a shocker. Now, let's take a look at those 24 items. Take a look at some of the allegations here. We are talking about authorization to construct certificates being issued without a public hearing, without a public notice, all sorts of crazy things. Now if that is a program that you are charged with - you are charged - you are charged with a supervisory situation here.

Commissioner Doppe:

I disagree. I think you have a legitimate beef to take up with someone but I don't think that we are charged with anything but determining the adequacy of the program and that is my personal opinion.

Robert W. Hall:

Is that right?

DAG Mischel:

Mr. Chairman, I can sense that there is some question about the term adequacy and while it is not defined in the statutes there is some benchmark and that is whether or not they are fulfilling the requirements of the Clean Air Act and one of the requirements is the public hearing, public notice provision so that is probably not a very good example, but in terms of internal management it would be very difficult for this Commission to handle without the county. This body is here for environmental adequacy purposes now while some of those issues are going to translate into a bad program that would be relevant information but certainly this Commission can't conduct its own accounting audit or determine whether or not the elected officials are doing their job.

Ian Ross:

My name is Ian Ross and I am the attorney for the Clark County Health District. I would like to respond to some of the issues that have been raised with reference to the standards and to some of the legal issues that have been faced by the Attorney General. I think the question raised is correct as to your role as a Commission. The word program usually, it goes to the type of function or the mission of the agency and the concept then I think was properly addressed - how are we doing in PM₁₀, how are we doing in CO₂. I think what is recognized in the statutory scheme is that the Clark County Health District is, in fact, a separate governmental entity. It acts as the Health Department of the municipalities in Clark County and also the Health Department of the County itself. We are not a municipal government as suggested by Mr. Hall, we are not a taxing authority nor do we claim to be. So if you look at 445B.520 which is the statute in question the question is do you believe that a program previously approved is inadequate. Bar comments have been made by some of the people testifying. As the attorney for the health district presenting air pollution control issues I am aware that some of the statements made are not accurate but I am not sure that terribly matters right now. I think that what does matter is if you look at the graphs that Mr. Naylor has presented, and he will explain them to you in a moment, the bottom line is the program is adequate. What has happened is that we in Clark County are either the fastest growing area in the United States or one of the fastest growing areas in the United States. We have over 18,000 acres under construction. That is a phenomenal amount of ground and yet our growth pattern in the last decade has been phenomenal and yet through all of that our CO levels are dropping, our PM₁₀ levels are dropping, our board has been very conscientious and has been taking the cutting edge in passing regulations, imposing penalties, civil penalties, guidelines. Those penalties are imposed by an independent hearing board made up of 7 citizens. Those penalties with a small administrative fee, approved by the legislature, go to the Clark County School District, the very building we are located in. Staffing levels of the APC have been dramatically increased and so consequently, if you will allow Mr. Naylor to show you, to take you through these graphs, we are proud of the program, proud of the work that a dedicated staff has been doing I think you will see that the program, there isn't a basis to believe, that the program is inadequate. Some of the criticisms that are in this document of Mr. Hall - one of the issues raised by Mr. Hall in the document which counsel has indicated is an open meeting issue not really before you but it is indicative. There has been complaints made that when regulations are considered by the Board of Health that the proposed regulation is then changed at the public hearing and therefore it is a violation of the open meeting law. That is something that happened before you today.

Accusations made of wrong-doing based on the fact that there are settlements of uncontested matters involving air pollution control violations and the use of strong editorial words that suggest wrong-doing - there were 2 of those items on your agenda today. We do the business that we are charged to do and we believe it well. We do, in fact, need to improve on occasion - we accept those criticisms and we approve and we get better but I am not sure that leads to a 445B.520 to say that our program is inadequate and that we, that the taxpayers should be subjected to a full-blown hearing before you on issues that we can't quite get a grasp on, even though we care what they are, and we get documentation on it but we have been there, we have seen it, we know what it is being suggested but in any even I would like to ask Mr. Naylor to take you through these graphs to show you that in the specific areas of our program we are adequate. We are actually more than adequate, we are on the cutting edge, we are leading in the western part of the united states and we are adequate.

Commissioner Molini:

Mr. Chairman, a question for Mr. Ross - and really again, while I think it is germane if for no other reason to enhance, at least my understanding of - the State Board Of Health then is a unique entity to -is there a relationship of the Clark County Board of Health to county government, to the County Commission then?

Ian Ross:

I appreciate that question because it is something I meant to mention and didn't. When we talk about the SIP there are two divided functions of the program in Clark County - one is the planning function and the other is the enforcement function. The planning function, or the preparation of the SIP that is reviewed at the state level is actually done by Comprehensive Planning which is the county government. County government will frequently, in order to reach toward attainment to perceive how we can get where we need to go in light of our growth, will make recommendations of programs that are considered by the Board of Health or their staff and then regs are promulgated and are presented but essentially the APC, which is a division of the Clark County Health District, is the enforcement side. The issue that was raised concerning administration, management - the business side of the Health District is handled by the administration division. We have a division that takes care of all of the computer aspects now, it has been consolidated in recent times, that generally has all the responsibility for all of the business aspects of the Health District. So when we talk in terms of an annual audit, when that issue comes up about the annual audit, that is prepared by the administration division and the budget is prepared by the Division. We have four divisions and Air Pollution Control is only one of the divisions, primarily involved in the enforcement of the regulations in order to keep our air as clean as it can be based on the rules, requirements of EPA, state and also the direction of the policy makers of the Board, more of half of whom are elected officials. I believe that will answer your question.

Commissioner Molini:

Thank you. That was helpful.

Michael Naylor:

If you could - I would like to walk through some of the graphs for a few minutes. They immediately follow the text in the June 10 memorandum. The first graph is on carbon monoxide and this is a graph of carbon monoxide at our Sunrise Acres area, formerly the East Charleston Station. The air of concern is about 3 miles north of here in the vicinity of Eastern and Charleston. What this graph doesn't show is that we have 13 other stations that measure carbon monoxide and we are only showing the problem area. That Sunrise Acres/E. Charleston station is the only one in the network that has had exceedences of the carbon monoxide standard. The other 13 stations have been clean ever since they were built, or at least have been clean since about 1990.

Chairman Close:

Is this the most difficult of all the testing sites in Las Vegas?

Michael Naylor:

This has been the most difficult area. There is kind of a stagnation pocket in that area where the land is flat versus

the alluvial plain that characterizes most of the valley so that pollution seems to hover in that one area. All the other stations are in compliance. We now have a few days a year where this one station is not in compliance and we are targeting some plans to bring that area into attainment by the year 2000 and that would be winter-time reformulated gasoline and some further improvements to the smog-check program and we think that will be enough to bring that area into containment. This problem of carbon monoxide is principally due to gasoline-powered motor vehicles. There are other sources, residential heating, commercial establishments, there are some stationary sources that emit carbon monoxide but by far, you know, 90% plus of this problem is due to gasoline-powered vehicles. Industry itself is a few percentage points of most of the carbon monoxide problem.

If you go to the next one on particulate matter, 1996 was kind of a bad year. We had a lot of episodes in 1996 - it was a dry windy year - we find that, and last night was an example, that on a windy, gusty day there is a higher chance of exceedence and somewhat depending on how many gusty days you have a year determines exceedences. But 1997 was the best of the last 3 years and 1997 had similar weather to 1995 and we did better than 1995 even though there were more acres under construction.

Chairman Close:

What was the pattern before 1995? You gave us from 1981 in CO - what was the pattern prior to 1995? Have we increased or decreased from several years back?

Michael Naylor:

There is a bit of an apples and oranges for about 3½ - 4 years now we have had continuous monitors that collect the data every day and we had few of those monitors before 1995 so there are some graphs that show that and the annual average is when we look at that and they have shown a slight downward trend since 1990 but it is a different instrument that only runs once every 6 days and it doesn't give the picture that we have from a monitor that runs every day. But we found that with having more enforcement staff, we were short-handed on enforcement and the Board Of Health corrected that, we have more enforcement staff now, the penalties are higher, we have the informational signs at construction sites and construction activity is the primary, or at least the single biggest source of PM₁₀. Again, industrial sources that are say subject to the offset program since those industrial sources contribute only a few percent to the PM total so even if there was not offset program that program is only applying to the industrial sources which themselves are only a small part. If we are really going to clean up particulate we need to focus on the construction activity. We are also finding vacant disturbed land as another big source.

Commissioner Johnson:

A question. Yesterday was an unusual day, particularly last evening. Do you know whether you had staff out after hours, enforcement staff, to see if there were violations and if so, how many citations were given?

Michael Naylor:

I don't know what our experience was for last night. We only had 1 station that actually exceeded. We had some other stations that were close. The 1 station that exceeded for Tuesday, this is Wednesday - right - on Tuesday for the midnight to midnight only 1 station exceeded because we had high levels from about 6 to 8 p.m., that was in North Las Vegas near Mc Daniel and Lake Mead Drive. We have looked at that area for several years - that whole area is dominated by vacant parcels with some loose soil and we are finding vacant, disturbed land, is the area to focus. In that particular area there is actually nothing -

Commissioner Johnson:

Is there a provision to deal with those vacant lands and their contribution?

Michael Naylor:

Yes. We have a research committee with the Board of Health that is looking at PM₁₀ controls, they are looking at several ways to take care of the vacant land -

Commissioner Johnson:

But you don't have a program in place to do that?

Michael Naylor:

It is not in place - that -

Commissioner Johnson:

How many years has that been identified as a problem?

Michael Naylor:

This was revealed to us in wind-tunnel studies that were paid for by the Health District about a year and a half ago so this knowledge is relatively new -

Commissioner Johnson:

You weren't out walking sometime and got sandblasted? I mean the casual observer, the citizen that calls in 700 complaints, I think observes that there is a problem and you take a wind-tunnel test?

Michael Naylor:

Well, we didn't have any estimate of categorizing how much was due to vacant land and the first good inventory of vacant land was in July -

Commissioner Johnson:

Then you only implemented this program a year-and-a-half ago to detect -

Michael Naylor:

Well no, the understanding that vacant land is important. The other issue is what are the regulations? Can we compel every owner of a vacant lot to pave it or put gravel on it or fence it? We have probably limited authority to do a hard commandment- the County Commission has asked-

Commissioner Johnson:

You certainly can deal with it when they are out disturbing it. We saw some sights yesterday, recent planted trees that the soil certainly was blowing - whatever mechanism that you have in place for recently disturbed sites was not being effected yesterday.

Michael Naylor:

Recently disturbed are construction sites for something that is happening right now and we do have regulations to address that and we will issue a notice of violation for not having dust control but vacant land, on which there is no development happening at all -

Commissioner Johnson:

Well, I saw a site where there was visible dust being blown from that is a recent construction site -

Michael Naylor:

O.K. - and if our enforcement officer had seen that last night, or one of our officers, that would be grounds for violation -

Commissioner Johnson:

Did you have anyone on duty last night?

Michael Naylor:

We had people on duty. I don't know what they found?

Commissioner Johnson:

Enforcement officers?

Michael Naylor:

Yes. We had enforcement officers that were responding to complaints last night and again we had people out - I'm not sure what they found.

Commissioner Doppe:

I might also add though, we have heard that they have 18,000 acres under construction and the one-and-only station that reported an exceedence was the one next to vacant land which I guess proves the fact that we live in the desert but it would also seem to indicate that they were doing a reasonable good job of keeping the dust down on the 18,000 acres that are under construction.

Ian Ross:

And maybe we need to go back a couple of steps. When we have a situation where someone is coming in to get a permit to do construction part of what they are required to do is to give a dust mitigation plan of what they intend to do, water trucks or whatever they intend to do to keep the dust down. Historically, because - a few years ago we didn't have enough staff, we primarily, the cases I dealt with was in response to complaints and we still do that but we have people who now are patrolling areas 7 days a weeks - weekends and in the evenings - on routine patrol and they are patrolling geographical areas so they are out there looking for dust regardless of whether anybody is calling in a complaint or not. We have hearing officers who meet approximately every 3 weeks and the agendas are running approximately 25 cases every 3 weeks. The numbers of penalties, or the cases - the large amount of the cases are what we call the 41-1 which is the dust complaints so we are, in the last few years, have been able to be much more proactive in this area than we have been before.

Commissioner Johnson:

You are now out of compliance for PM_{10} . Does your SIP have a plan that will bring you in compliance with PM_{10} ?

Michael Naylor:

There are two standards for PM_{10} . There is an annual average period or your annual average and then there is a 24 hour standard. The State Implementation Plan is prepared the Clark County Department of Comprehensive Planning and then processed by the County Commission -

Ian Ross:

and signed by the Governor -

Michael Naylor:

It projects attainment of the annual standard by the year 2001 and it appears that we are either close to attainment of the annual standard right now. In the case of the 24-hour standard the plan anticipated difficulties reaching attainment of that standard, like the dust from vacant land was one of the issues and it has requested, that plan has requested, a 5 year extension in time to reach attainment of the 24-hour standard. And that request has not been approved or denied at this point by the EPA.

I would like to go to the last graph. Ozone is sometimes -

Commissioner Gifford:

I would like to make just one other comment before we get off of this one. Just in my own opinion this graph doesn't really show anything. People keep saying the PM_{10} is going down and actually 3 years of data is not enough to establish anything and all this does is reflect that some years it goes up and some years it goes down and alluded to the thing on how windy it is and probably 100 other things that go into that, number of acres that is being disturbed and so-forth being part of that but this graph doesn't show anything. And secondly, whether the PM_{10} particles are coming from abandoned lands or construction lands the equipment doesn't differentiate based on

particle coloration or anything that I know of so I think that argument is moot at this point. I mean there is no reason to argue one case or the other.

Michael Naylor:

The last one is a graph on ozone, that is an invisible pollutant, it is also known as summer-time smog, there is probably 200 metropolitan areas in the United States that are not in attainment of the new ozone standard. We are plotting our ozone compared to the new standard that was promulgated less than 1 year ago. We are still in compliance with the ozone standard, we are nervous with prospective growth of what will happen but at this point we are in compliance with the ozone standard. Again, motor vehicles are the principal source of the emissions causing ozone -industry, such as paint booths and gasoline stations do contribute and we have regulations dealing with all those types of facilities and again we found the main trick to reach compliance occurred in the mid 1980's when the BMI Industries were compelled to do retrofit to get rid of their chlorine emissions. So overall the air quality picture is either in compliance or it has been improving. We do acknowledge that weather makes a difference one needs to look at long-term trends but we are also mindful, in the case of PM₁₀, that our levels have actually dropped in spite of record amounts of construction activity occurring.

Chairman Close:

I have two comments. I used to be in an office that overlooked the east valley from 180 degree angle and I could see many, many things out the year - dust storms just come, pick up and just blow it across this valley and there is no way of controlling something like that. We live in the desert and we are not going to avoid that. I am somewhat impressed with the previous graph which shows the CO standard. I have been on this committee long enough now to remember when we were up in the 48 day non-attainment situation and regardless of what caused it, whether you caused it or El Nino or whatever caused it, we have made dramatic improvements. I am impressed with that graph, I see a lot of improvement and that impresses me.

On the other hand I read the accountant's report and it shows me there are some significant areas of improvement that have to be made and I presume that you have accepted all of the comments they have made and you are taking appropriate steps to implement whatever procedures have to be endorsed to correct that.

Ian Ross:

Also we have a complimentary letter from EPA. Once in awhile people say that EPA has problems with us. We have a letter dated December 15, 1997, on our grants program: "We would like to take the opportunity to congratulate you for meeting the requirements of the grant work plan as well as all the other responsibilities of the CCHD. We look forward to another productive year working with you to enhance air quality in Las Vegas" and this from Region IX, signed Jack Copeland, Chief.

Essentially I guess there are positive comments, there are negative comments. The question before you I think has been very adequately stated "do you have reason to believe that the program is inadequate" and if you do are you going to put us through, and the taxpayers through, a full-blown hearing of complete magnitude of the program. We have no problem ever, whether individual board members or your staff coming down and talking with us or going over the program. We have, on various occasions, spent hours talking with people on the telephone, including some of the people who have spoken here today. At every board meeting there are reports made by each of the divisions, air pollution control presents materials of all the activity of the APC. The hearing board, at each board meeting reports are made on the air quality, we participate in air quality committees, PM₁₀ subcommittees, all those reports are made to the board and those reports are available at our board meetings. The agency is very user-friendly to all people, contrary to some of the comments being made today, we believe our program is adequate, we would appreciate a finding that you would go no further. We have heard comments about asking your staff to look into it further and reporting back to you at some future time and if that is your choice, so be it, and we would, of course, cooperate with your staff in that regard.

Commissioner Johnson:

I have other questions -

Chairman Close: Are there any other comments?

Robert W. Hall:

Two quick remarks. I think we have gotten off course here. My allegation are not about pie-in-the-sky and the future. Nobody can beat these people on telling wonderful things that they are going to do in the future. I've got hard facts on the deck about the last several years. That is the issue before you. My questions, which I would have asked him, are where is the money and where is the missing audit? You notice they never answer that.

The other issue is that last night, the reason you saw all the dust is because they are relying solely on 1½ percent water. Nobody in the country does that. There were no trucks out there spraying water and that is why you got all the dust across the valley but there is one more issue. Those of you that come from Reno or Carson City do you remember CINO in 1985 - they came in, bull-dozed a huge tract of land, left the dust to the neighbors. The citizens took a straight TORT suite against them, the judgement was just under \$10 million dollars, the judgement was paid by the insurance companies and CINO went bankrupt and I tell you what Reno and Washoe County learned, they put in a new plan where they say anything above an acre you have to come in with a plan, you can say you are going to control the dust anyway you want to but you can't bulldoze more than 120 acres at one time without building on it or stabilizing. Now they could have done that years ago and they haven't done it and there is a very simple reason why. But all I am saying is the issue before you is what happened in the past.

One more thing. Here you've got the enforcement agency, and let me give an analogy of the kid in school - the kid in school is being pushed to get better grades, he makes up his own grades. These people are in charge of the fact that when the valley grows they should have doubled or tripled the number of monitoring stations, they haven't done that, and Mr. Naylor is in charge of the stations. I'm not suggesting that he is anything but absolutely stellar character but it makes me nervous for some strange reason.

Chairman Close:

Any other comments?

Dr. Otto Ravenholt:

Mr. Chairman and members of the commission I am among the private citizens now, as Bob and Ken and some of the others are, but I have more than usual awareness of the program and the structure of it and I would like to add a few comments on that. I don't know if you are aware that the basic nature of the air quality control program is one consisting of the County Commission by Governor designation being the agent to plan air quality. It creates the air quality plan for the SIP. Not the Health District. The Health District performs two functions: One is monitoring air quality and the other is carrying out the enforcement program and the District Board of Health adopts regulations to carry out the plan the county creates and to enforce, with its hearing board and other mechanisms, the stricter of the regulations. The monitoring activities of the Health District I think have been uniformly and consistently endorsed and praised by EPA as being of high quality and consistent. It has been a steadily improving and strengthened program of measurement. For instance on carbon monoxide, there are now a dozen stations that monitor carbon monoxide on a continuous basis. Every hour is a new 8-hour average at every one of those stations and the carbon monoxide exceedences are triggered by any station registering an exceedence for any one of those 8-hour averages that are run around the clock. That is over 100,000 such measurements a year in this valley and less than ½ dozen at one station exceed the limit and then by less than 10%. That is how close we are in the carbon monoxide to the standard. That is in the face of 800,000 vehicles, having quadrupled over the past 20-odd years. And that is an achievement that I think is a stellar achievement for the fastest growing community in the country and in the valley where the valley doesn't expand, but only the number of people and activities in it do. On the dust PM₁₀ - as you know that is the small particles - and now we are talking about PM_{2.5} and even small particles, 5 years ago, 4 years ago, those were being monitored in keeping with an EPA endorsed pattern which was a monitoring mechanism that monitored only every 6th day. And we had, I think, 10 or 11 such stations. So the exceedence on dust would be any station on a 24-hour measurement exceeding the standard. The opportunity for a hit to trigger that was limited because of the limited sampling that method of measurement provided. We now, for the last 3 years, have been monitoring with some 14 stations, everyone of them monitoring 24 hours a day and the opportunity to trigger an exceedence is obviously multiplied and the assurance of the quality of the air with regard to PM₁₀

is strengthened by the number of stations and the continuous monitoring. So, these measures of air quality have been strengthened and indeed it is the Health District that is doing the monitoring, the stations, the techniques, the personnel are EPA trained, the data is reported continuously to Research Triangle, to the EPA Headquarters, and I assure you the measurements are not challenged by EPA as to their validity. And I would add again that the exceedences that we have had have been by less than 10% above the standard at one station.

The various accusations that you hear, I would like to just address for a moment. The Emission Reduction Program is one that is supplemental to and one top of the EPA Emission Reduction Program. The EPA one relates only to major sources. The District Board of Health, in keeping with the Clark County Commission, chose to require emissions reduction or offsets for new enterprises to be applied to many more minor source in that categorization, on a two-for-one basis. Now how can that be less than more stringent than the federal requirement? It does not erase the federal requirement for the major sources, that is in place - that is carried out, but it adds to it that all the smaller enterprises must arrange for offsets that compensate for their own contributions, whether it is a dry-cleaning station or whatever it is. In doing that a real problem occurred because what they are required to do is demonstrate emission reductions that compensates for their own. Obviously, little operators cannot go find that, cannot go create that and so the Emission Reduction Credit System was set up as a brokered account, if you wish, to where the little operator doesn't have to go and achieve the emission reduction them self. He can pay into the Emission Reduction process and then the District, through the Public Works agencies of the various cities in the county arrange that dust reduction would be a compensatory thing for the emission of the new enterprise. That has been done through the Public Works Department. The bookkeeping on that has had its limitations and got a bit overwhelmed by the sheer complexity of this. I think that has been thoroughly straightened out, I have not been involved for the past month, but the computer program to keep track of all those transactions and to have a central bank of them is in place. I think it is one that will satisfy any logical scrutiny and that it will leave very few, if any, loose ends. But I would just add that it is a very complex program when you take it from applying to the big boys to applying to all the little operators where if you have a 1-ton emission for a year's time you must offset from ground zero, 2 to 1 your emissions rather than starting at 70 tons. It brings a whole lot of small players into the act and it isn't complicated because the first year you are required to do emission reduction or emission reduction credit equal to your potential to emit then it gets adjusted the next year by what you actually emitted and the potential is calculated on more hours of operation than what you actually did and so this adjustment of it is inherently a complex thing involving, as I say, a great many individuals because the threshold is lowered as it was. And it overwhelmed, in some measure, the staff that did it but I don't think there is any lack of intention of doing it as straightforwardly and as appropriately as it could be done. And so I am just adding the comment from my own perspective of having been involved for the years I was that the District has operated and Air Pollution Control Program here for the fastest growing community, we have tried to do it without multiplying the staff, we over-did that, we should have expanded the staff more rapidly - but it was not our pattern to expand unnecessarily the number of people involved and we now in the last 2 years have increased by more than 50% and I am sure we shortly will be closed to 100% increase in the individuals involved in the Air Pollution Control Program here. Again, it meets the EPA standard and the EPA endorsement of where we are at with the plan is one that is a solid endorsement. Thank you.

Chairman Close:

Any questions? Just a second. O.K. you can make one more comment and then you will be finished with your comments.

Robert W. Hall:

Thank you sir.

He just proved my point. He is talking about paylution - he is talking about paying to pollute and second of all, the EPA has come in - notices in the paper, or articles have been appearing in the paper where the EPA has come in and levied fines from \$200 to \$500,000 here in the valley. That never would have happened had anything that these people have been telling you been true.

Chairman Close:

Any other questions? Hearing none I will declare the public hearing to be closed. Any comments by the

Commissioners?

Commissioner Johnson:

I - reading the statute I think that, you know our involvement here really does hinge around finding and adequate or inadequate program. I have enough questions that I am not prepared to find either way in this and therefore, my suggestion will be that we continue this and ask a separation of the items that are determined to be under our purview and those that are under our review that we ask the division to prepare a briefing paper on and again, not to determine the adequacy or inadequacy but to define the issues that have been brought forward in this hearing. Not to resolve the conflicts but to identify them and supply additional information. Specifically, the report that came to us from the county firm supplied by the County Health Department raises enough questions that I think that we should consider what actions they have taken to correct these areas - if nothing else, and less there be any confusion I am not a big proponent of the road paving offset program and haven't been for a long time. But, the first item of the entire population of 23 we found that 4 files did not contain documentation from their respective Public Works Departments and this gets into the issue of whether or not it's an adequate program if the developer can simply subvert that the intentions of the program and get double credit. These type of questions, I feel that I need additional information on and that is my recommendation where I'll be coming from as this discussion proceeds.

Chairman Close:

Any comments?

Commissioner Molini:

Yes, Mr. Chairman. Lew, one more time since it is not July 3rd yet - in considering the adequacy of the program and if this body were to ask the Division to do an investigation, to conduct an investigation, what would be involved with that? What would the magnitude - what would be the impact on current Division staff. We have heard a plea from the District Health Board, a concern at least, about the amount of time and resources that they might have to expend, what would be the impact on the Division?

Lew Dodgion:

It would be something that would be difficult for me to tell you right now that it would take 60 man-hours or something like that because you don't know until you start following up and looking into things. But, it would be - there would be a significant effort required on the part of the Division and also on the Health District and these other folks because we would have to spend time with them and also on the Attorney General's office - we will need some assistance from the Attorney General's office - statutory authority for instance, and things like that. And it isn't an insurmountable task -and I am saying that because July 3rd is coming right up -do you agree with that Allen?

Allen Biaggi:

Yes. I agree that we can break this out and do it in reasonable chunks and we can always hire Mr. Dodgion as a consultant to help us out here.

Lew Dodgion:

No you can't!

Chairman Close:

Are there any other questions?

Commissioner Doppe:

I have some more comments.

Chairman Close:

More comments?

Commissioner Doppe:

Yes sir. I want to start out by saying that I do not have an opinion on what I feel are the number of management issues that you've raised. They may or may not be correct, I would like to see them resolved. I want to move on then into what I feel is within NRS 445B.520 compels us to do and that is - you know, fundamentally the legislature has taken the Clark County Air Pollution issue out of our hands and given it to Clark County and that only way that it comes back to us is to the extent that we make a ruling that we feel that they are doing an inadequate job of handling that and so I guess we ought to talk about what is adequate and what is inadequate and I have got a couple comments on that, notwithstanding the management issues that have been raised, notwithstanding the audit questions - or I won't say audit but you know the management report questions raised by the accountant in there which I think need to be addressed, but is the agency, the Health District holding its own - or gaining ground, on the air pollution problem here in Southern Nevada? At the same time that we are the fastest growing metropolitan area in the country. The answer is yes. To my mind that speaks of an adequate effort at solving the problem. I don't know that this thing says that the air quality - the NRS doesn't say the air quality is supposed to be perfect - are they doing an adequate job and it strikes me as though to the extent that they are holding their own or gaining ground on these measures, I feel they are doing an adequate job.

Can the state do a better job? I don't think so. And we, as a board, passed better judgement on these folks than the elected officials who they report to today. And it light of strong evidence that their program is inadequate one way would be if they hadn't you know - the NRS says if they haven't established such a program, clearly they have so now we are back to the difficult one, is it adequate or not? Can we make a better judgement on that than the elected people right here in the community? I don't think so. I would love to see your questions answered. I am not one of the friends of the District - I am neither a friend or a foe - I actually confess to having been fined once by them, gotten a little religion, spending \$1,000 a week now - or a month -to make sure that my project does not elect fugitive dust into the atmosphere and it hasn't for a year and a half, thank goodness, because I did not like the fine and you know I can't claim to be one of these people who you say are receiving benefits or favors to the extent that is true I don't know - I am not one of them. I can say that in my case it works, the medicine worked and we got some religion. We don't allow dust to come off and I know that the preponderance of people in my industry are making the same effort and making the same attempt because they have gotten religion too. It is not because they woke up one morning and decided that they were going to start spending \$1,000 every couple of weeks to water their sites, it is because they were informed that they needed to do so and they started. I think that speaks of an adequate program. I've seen evidence that they are working to pave outline roads that need paved - those are not easy problems to solve but they are taking a shot at it. As an industry we have had some disagreements about some of their methods, in the past, with how they go about solving those problems but we don't disagree with the fact that they need solved so I can't see where this board can find that they have an inadequate program and when it comes time, I will be happy to make a motion to that.

Commissioner Griswold:

Mr. Chairman, I'm afraid I disagree with Mr. Doppe. I feel that fiscal responsibility and responsible management are definitely an important part, and a very important part, of any adequate program and I feel responsible as a Commissioner, responsible to the citizens of the State of Nevada, that I would like to see this pursued further and have the Department instigate an investigation of the issues presented to us.

Commissioner Molini:

Mr. Chairman, I would like to make a comment. I have agonized a little bit about how to approach this and initially felt something like Commissioner Johnson, that maybe we needed to take a better look at the material provided, some of which was just provided today, but I guess ultimately I agree with Mr. Doppe that the finding that is before us, that we have to render here, is "is the program adequate" and I have been on this Commission for 16 years and I've watched the Clark County situation pretty closely. I think we all have to recognize, and it has been pointed out time and again, that not only do we live in a desert but this is the fastest growing community in the country and it has got to be a horrendous job to try to stay on top of this air pollution problem and especially PM₁₀. As Mr. Johnson pointed out, we did see lots of fugitive dust last night but I also know that even the Division makes provision to ameliorate penalties when you have the kind of environmental conditions, the kind of wind velocities,

that were experienced here last night. So, my leanings at this point are certainly that I don't think the evidence has presented to us that there is an inadequate program here.

Commissioner Johnson:

I would agree that there are - I wouldn't wish to make the decision about the inadequacy but if that is the question that we are deciding I will remind you the answer that was given that we are - they are, out of compliance on PM₁₀ and there is not plan to bring it into compliance. That is an inadequate program because it is unhealthy and there is no plan to bring it into compliance. It may be that there is a reduction but if you wish to make that decision - I don't wish to make that decision at this time. I'm asking that we continue and find additional information. Perhaps by that time they will have an answer to whether there is a five-year extension on their SIP or not but there isn't now, one-way or the other, and this is may argument that the case has not been made either way and to simply say that there is improvement, the object is not to show continual improvement because you will never reach compliance with that, the object is to get to compliance or have a plan to bring your area into compliance, and this is my point. And the other issues involved, the adequacy or inadequacy of these programs for offsets I think is subject for debate - whether you approve of that kind of program - whether you think management of that program has been well accomplished or not is part of being taken into consideration but I really think that the issues, some of the issues, that are pertinent and relevant to this committee's action deserve additional study and that is the basis of my - I simply really don't wish - and this is not simply just putting off to some future date a hard decision that will have to be made - but I think that there has been questions raised that additional information would be beneficial to all parties concerned.

Commissioner Gifford:

I would endorse those comments - but maybe from a little different aspect - I really don't know if we are talking a hard decision at this point or not. I think the Commission, on just what we have heard this afternoon, would be foolish to make a decision as to whether it is going to be difficult or yes or no as to whether we further investigate it or not. I like the suggestion that the Division take the time to provide some additional information for us just so that we are a little bit better informed - call it accountability a little bit if you will - but they are in I think a good position to provide a little insight. It would certainly help me and I assume that I am not too much different from a lot of other people on the Commission and I would strongly endorse their taking the time, at our request, to provide a little documentation there as to the accountability of the program.

Chairman Close:

I guess my thought is that based on the testimony we have had today and looking at the statute, I could not say that the District is inadequate. I think they have made, in my experience, significant progress at a time when Clark County has grown extraordinarily rapid and we are out of compliance at one testing point for carbon monoxide but that has been a very difficult location in the entire Clark County Valley that they have worked on remarkably well, I think, to get us where we are now and luckily outside of that one place we are significantly in compliance with carbon monoxide and I am impressed with that. On the other hand, I am disturbed with the accountant's report and the management deficiencies that appear apparent. So I guess I would not be in support of a motion that would find they are inadequate in their program. In fact, I think I would like to put it to bed myself and say their program is adequate because I believe it is also deficient as pointed out by the accountant's report. What I would like to do is to find that their program is adequate and request staff to make an investigation into the management practices as suggested by the accountant's report. I think those are serious and I think as Marla said, I don't think those are things that should be on-going and as Dr. Ravenholt said, there may or may-not be excuses for it, but from this point on there should be no excuse and should be taken care of. I think many of the things that Mr. Hall brought up are not under our purview and not within our jurisdiction and things that we cannot look at that would be better addressed to approach the Clark County Commission and other local agencies relative to accountability of money and things of that nature -those are not really our, I don't think those are in our domain but I would ask the Commission - whatever happens - to ask the staff to make an examination of the accounting report and report back to us within a reasonable time.

Commissioner Trenoweth:

Mr. Chairman, so we could bring this to a close, I would so move, if I can get a second on what you said.

Commissioner Doppe:

Second.

Robert Hall:

I would like to make a point the order on the agenda -

DAG Mischel:

No! Mr. Chairman -

Chairman Close:

The Commission has closed the public hearing -

DAG Mischel:

That is out of order, Mr. Hall. The question is not whether, specifically speaking, whether the program is inadequate it is whether or not the Commission would proceed to hearing on the petition.

Chairman Close:

I will amend my comments then to suggest that we not proceed to a hearing and ask the staff to make an investigation on the report of the accounting information we have.

Commissioner Trenoweth:

Again, I would so move.

Commissioner Doppe:

And I would amend my second to match that.

Chairman Close:

Any other comments?

Commissioner Gifford:

Just one for clarification. I have the feeling that the Division was not particularly, nor did we have the ability - other than a casual interest as you expressed - but do we really get into the items brought up by the accounting firm or does the Division provide additional information on that kind of information? I had the feeling they did not so maybe I am off base here somewhere.

Chairman Close:

My impression is, and they can speak for themselves, is that they are willing to look into these areas -

Commissioner Gifford:

And that included the accountant's report? O.K. - I didn't understand that. Thank you.

Chairman Close:

Any questions? Any further comment? On the motion all in favor.

Commissioner Doppe: Aye

Commissioner Trenoweth: Aye

Commissioner Griswold: Aye

Commissioner Coyner: Aye

Commissioner Molini: Aye
Commissioner Gifford: Aye
Commissioner Close: Aye
Commissioner Johnson: Nay

Chairman Close:
That motion is carried. Please reflect the negative vote.

END OF VERBATIM DIALOG

Chairman Close continued to Agenda Item V: **Discussion Items**

A. Status of Division of Environmental Protection's Programs and Policies

Lew Dodgion, NDEP Administrator announced this was his last SEC hearing and expressed his appreciation for the privilege of work with the Commission for 18 years and introduced Allen Biaggi who assumes the administrator of NDEP role on July 6, 1998.

Commissioner Molini expressed his appreciation for Mr. Dodgion's professionalism, dedication and fair-handedness and wished him well in his retirement.

Commissioner Griswold agreed with Mr. Molini comments and expressed her belief that Nevada is a better place because of Lew and his work.

Chairman Close reported he met Lew when he was a legislator, has always respected Lew and his knowledge of environmental matters and declared he knew he could rely on everything Lew told him to be absolutely true, regardless of whether it was - or was not - helpful to the Division. Chairman Close complimented Lew on being a very able administrator and acknowledged that Lew is respected by everyone because of his fairness. Chairman Close welcomed Mr. Biaggi as the new head of the Division.

Ken Mahal, President Nevada Seniors Coalition reviewed a letter, handed to the members, sent to McCarran Airport regarding hundreds of permits that were tracked since 1981.

- Number 2: Questions their annual emissions report as required by the federal government.
- Number 3: Questions their quarterly report as it responds to new source because that information is not in the record of the enforcement department of Clark County We are asking McCarran to prove to us that they have gone through the federal, state and local regulations.
- Number 4: JP-8 with JP-4. We have seen absolutely no permits, we've seen no approvals for storing jet fuel.
A very different problem.
- Number 5: Regards their permits to construct. We cannot get a paper trail that is consistent.
One consultant reported they had 400,000 tons of emissions.
The next report reduced emissions to 100 tons. Chicago has 4,000 tons and not as many flights as McCarran. McCarran was supposed to expand based on a game plan to bring Clark County into compliance. We do not find where they have done that nor do we find any information on offsets. We are concerned that McCarran is going to bring in 15 thousand new customers, many additional flights, and we do not see documentation or a paper trail in the Clark County Health Department, Air Pollution Control Division.
McCarran has announced starting to plan the next addition which will bring another 30 million people to Las Vegas so they must be in compliance.

Mr. Mahal expressed his opinion that air quality in this valley is a serious question. It is reported that the quality of

air

is worse in Searchlight than it is here and we find that very confusing.

You need to remember that all regulations are politically compromised regulations. They are the minimum acceptable standards and that does not mean they are the best standards that we should work towards.

Mr. Mahal concluded with 18,000 acres of land disturbed and under construction additional monitoring stations have not been added. Las Vegas should have 20 more stations. We have not increased the monitoring in this desert area. Monitoring stations now are located in developed Las Vegas.

Mr. Mahal informed the Commission that a copy of this letter has been sent to the Attorney General and to EPA. We are going to demand the proof that we are unable to get from the Clark County Pollution Department.

Chairman Close asked Mr. Mahal to report back to the Commission if he is not satisfied with the answers he receives.

Mary Shope, a Boulder City resident, appeared to request help in Boulder City and the southern part of the state regarding Boulder City's permit for discharge effluent water that is under consideration. What started as an "authority to construct", without a public hearing, resulted in the sand and gravel operation getting effluent water where Boulder City doesn't have enough effluent water. The conflict is:

Allen Biaggi's area says "don't spray when it is windy, when the Eldorado Valley is windy"

Michael Naylor's area, the Health District, says "do spray - control PM₁₀, the dust"

Whose permit takes precedence or priority?

Another issue is conservation. At the Water Pollution Control Division public hearing in Boulder City it was stated "our city does not have enough effluent water to go down to the Veteran's Cemetery". Granted, this Veteran's Cemetery will always get water but they may be paying for potable water, inappropriate use of water, and paying higher rates.

I was told to talk to Michael Turnipseed, the State Engineer's area, for water rights issues. They sent me back across the hall to Catherine and that area. There needs to be ownership of this issue of not enough effluent water and conservation with this permit that is pending. I did not like the answer the water rights division gave me - "go to the District Court". That is really not a solution. Please get the county, Allen's division, Michael Turnipseed's area and the City of Boulder City together and do what is right regarding air, water and conservation permits. This affects the entire state because it is a Veteran's Cemetery for Southern Nevada and the State of Nevada.

Chairman Close requested a response to Ms. Shope's comments.

Allen Biaggi reported he has made a commitment to Mary to try and get all of the parties together to resolve this issue as quickly as possible. There is a jurisdictional conflict because the Division deals with water quality and Mr. Turnipseed's office deals with water quantity and its regulation.

No additional public comment was forthcoming.

Chairman Close adjourned the hearing at 4:06 p.m.

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STATE ENVIRONMENTAL COMMISSION
EXHIBIT LOG

Hearing Date: June 17, 1998

Location: Las Vegas, Nevada

#	Item	Item Description	Reference Petition #	Accepted Yes/No
1	2 page document	Proposed amendments to Petition #98005 (LCB R-062-98)	98005	YES
2	2 page letter	Written testimony from the City of Henderson regarding Las Vegas Wash/Bay Standards	98005	YES
NDEP -1	2 page outline	NDEP - Listing of Hall Petition Issues	Robert W. Hall Petition	YES
NDEP -2	SEC	445B		
3	1 page document	Letter from Ken Mahal to Jacob Snow, McCarran Airport, dated June 16, 1998		YES