

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF June 20, 2000**

**HELD AT: Las Vegas, Nevada**

**TYPE OF HEARING:**

<b>YES</b>	<b>REGULATORY</b>	
	<b>APPEAL</b>	
	<b>FIELD TRIP</b>	
	<b>ENFORCEMENT</b>	
<b>YES</b>	<b>VARIANCE</b>	<b>(Southern California Edison)</b>

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

<b>YES</b>	<b>AGENDA</b>
<b>YES</b>	<b>PUBLIC NOTICE</b>
<b>YES</b>	<b>MINUTES OF THE HEARING</b>
<b>YES</b>	<b>LISTING OF EXHIBITS</b>

**NEVADA STATE ENVIRONMENTAL COMMISSION**  
**A G E N D A**  
**June 20, 2000**

The Nevada State Environmental Commission will conduct a public hearing commencing at **10:00 a.m. on Tuesday, June 20, 2000**, at the Las Vegas Valley Water District located at 1001 South Valley View Blvd, Mead Room #2 and #3, **Las Vegas**, Nevada.

This agenda has been posted at the Clark County Library, Grant Sawyer State Office Building, and the Las Vegas Valley Water District in Las Vegas, the Washoe County Library in Reno, the Department of Museums, Library and Arts, and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on May 19, May 22, May 31 and June 8, 2000 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 April 20, 2000 meeting. \* ACTION**

**II. Regulatory Petitions \* ACTION**

**A. Petition 2000-07 (LCB File R-055-00)** is a permanent regulation amending NAC 445B.400 to 445B.774, the air quality regulations governing the Inspection and Maintenance (I/M) program in Clark County. The proposed regulation adds a requirement to inspect the on-board diagnostic (OBD) system for model year 1996 and new motor vehicles to ensure the proper operation of the vehicles emission control components. The definition of "certified on-board diagnostic system" is added. This regulation is proposed to become effective in the event that the air pollution control measures in Clark County are insufficient to attain federal carbon monoxide ambient air quality standards.

**B. Petition 2000-08 (LCB File R-087-00)** proposes to permanently modify NAC 459 by amendments to NAC 459.95334 to increase fees currently assessed under the Chemical Accident Prevention Program (CAPP). The regulation provides for an increase in annual fees for the period until June 30, 2001 and then again on July 1, 2001.

**C. Petition 2000-09 (LCB R-090-00)** is a permanent amendment to NAC 519A.010 to 519A.415, the mining regulation and reclamation rules. The amendments include an added definition for "process fluid stabilization," the establishment of a readiness fund for emergency fluid management with fees in the year 2001, 2002 and 2003. Amended is NAC 519A.345 by allowing surety's to be used for process fluid stabilization. NAC 519A.360 is amended to limit only the cost of reclamation activities in the calculations of the aforementioned fees.

**III. Settlement Agreements on Air Quality Violations \* ACTION**

- A. Nevada Power Company; Notice of Alleged Violations # 1394 to 1404
- B. Al's Excavating; Notice of Alleged Violations # 1432
- C. Frehner Construction; Notice of Alleged Violation # 1431
- D. KG Walters; Notice of Alleged Violation # 1433

**IV. Request by Southern California Edison for a variance to the opacity requirements for the Mojave Power Generating Station in Laughlin, Nevada \*ACTION**

**Page 2 - Agenda of Environmental Commission Hearing for June 20, 2000**

**V. Division of Internal Audits recommendation regarding a State Environmental Commission request for the State Board of Health to designate a representative with a medical background. \* ACTION**

**VI. Status of Division of Environmental Protection's Programs and Policies**

**VII. General Commission or Public Comment**

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent 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>. In addition the State Environmental Commission maintains an Internet site at <http://www.state.nv.us/ndep/admin/envir01.htm>.

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 (775) 687-4670, extension 3117, no later than 5:00 p.m. **June 14, 2000.**

# NEVADA STATE ENVIRONMENTAL COMMISSION

## NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **10:00 a.m. on Tuesday, June 20, 2000**, at the **Las Vegas Valley Water District**, located at **1001 South Valley View Boulevard, Mead Room #2 and #3, Las Vegas, Nevada**.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations. 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 2000-07 (LCB File R-055-00)** is a permanent regulation amending NAC 445B.400 to 445B.774, the air quality regulations governing the Inspection and Maintenance (I/M) program in Clark County. The proposed regulation adds a requirement to inspect the on-board diagnostic (OBD) system for model year 1996 and new motor vehicles to ensure the proper operation of the vehicles emission control components. The definition of "certified on-board diagnostic system" is added. This regulation is proposed to become effective in the event that the air pollution control measures in Clark County are insufficient to attain federal carbon monoxide ambient air quality standards. (This petition was previously publicly noticed for the April 20, 2000 hearing on March 21, 2000, March 29, 2000 and April 6, 2000.)

**2. Petition 2000-08 (LCB File R-087-00)** proposes to permanently modify NAC 459 by amendments to NAC 459.95334 to increase fees currently assessed under the Chemical Accident Prevention Program (CAPP). The regulation provides for an increase in annual fees for the period until June 30, 2001 and then again on July 1, 2001.

Businesses will see an increase in annual program fees. The program audits conducted by Chemical Accident Prevention Program (CAPP) staff have been beneficial to many businesses, particularly small businesses. The immediate effect of the increased fee would be increased operating cost. The long-term effects would ultimately manifest themselves as lower accident rates. The adoption of the amendment is not anticipated to have direct economic impact on the public. 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. The fees generated by this increase will fund two engineers and a half time clerical to implement the chemical accident program regulations for 39 regulated facilities. The fees as amended will result in approximately \$275,000 annually being collected from regulated clients.

**3. Petition 2000-09 (LCB R-090-00)** is a permanent amendment to NAC 519A.010 to 519A.415, the mining regulation and reclamation rules. The amendments include an added definition for "process fluid stabilization," the establishment of a readiness fund for emergency fluid management with fees in the year 2001, 2002 and 2003 ranging from \$ 1,000 to \$ 35,000. Amended is NAC 519A.345 by allowing surety's to be used for process fluid stabilization. NAC 519A.360 is amended to limit only the cost of reclamation activities in the calculations of the aforementioned fees.

The public would be better protected from possible financial impacts due to unsecured closure of mining operations and emergency fluid management obligations. The public is not adversely affected in the immediate or long-term. Mine operators with process fluid stabilization needs may be required to post additional surety. Fees are based upon the total reclamation liability, with surety for process fluid stabilization required through mine closure. Fees for the readiness fund would be collected for only three years and the fund is to be replenished by surety money collected. No additional costs are expected for collection of the fees. The Bureau of Land Management and the USDA Forest Service requires surety for process fluid stabilization on public lands, but not private lands.

**Page 2 - Notice of Environmental Commission Hearing for June 20, 2000**

Through joint bonding, done by a Memorandum of Understanding, duplication is avoided. There is no equivalent federal regulation for the readiness fund. The requirement for a surety for process fluid stabilization is not more stringent than federal requirements. The total amount of the readiness fund is anticipated to be approximately \$1,000,000. The fund is to be used as a bridge to support the management of mining process fluids during the surety revocation process, with the fund being replenished by surety money collected.

Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are 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."

Persons wishing to comment on the proposed regulation changes 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 five 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>. In addition, the State Environmental Commission maintains an Internet site. It is at <http://www.state.nv.us/ndep/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on **June 14, 2000**.

This public notice has been posted at the following locations: Las Vegas Valley Water District, Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library in Reno, and Division of Environmental Protection and Department of Museums, Library and Arts in Carson City.

###

**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of June 20, 2000**  
Las Vegas Valley Water District  
Las Vegas, Nevada  
**Adopted Minutes**

**MEMBERS PRESENT:**

Alan Coyner  
Fred Gifford  
Joseph L. Johnson  
Roy Trenoweth  
Paul Iverson  
Terry Crawford

**MEMBERS ABSENT:**

Melvin Close, Chairman  
Mike Turnipseed, Vice Chairman  
Demar Dahl  
Mark Doppe  
Robert Jones

**Staff Present:**

Deputy Attorney General Brian Kunzi - Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
Sheri Gregory - Recording Secretary

Acting Chairman (AC) Coyner called the meeting to order at 10:00 a.m. He introduced himself and announced that he would be filling in as Acting Chairman in place of Chairman Close and Vice Chairman Turnipseed. He noted that the meeting had been properly noticed in compliance with the Nevada Open Meeting Law. He introduced Brian Kunzi as filling in temporarily for the position from the Attorney General's office in replacing Jean Mischel who relocated to Alaska.

**Agenda Item I. Approval of minutes from the April 20, 2000 meeting.**

**Comm. Crawford moved for acceptance of the minutes.**

**Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

Chairman Close moved to **Agenda Item II. Regulatory Petitions.**

**(Petition 2000-07 (LCB File R-055-00)** is a permanent regulation amending NAC 445B.400 to 445B.774, the air quality regulations governing the Inspection and Maintenance (I/M) program in Clark County. The proposed regulation adds a requirement to inspect the on-board diagnostic (OBD) system for model year 1996 and new motor vehicles to ensure the proper operation of the vehicles emission control components. The definition of "certified on-board diagnostic system" is added. This regulation is proposed to become effective in the event that the air pollution control measures in Clark County are insufficient to attain federal carbon monoxide ambient air quality standards.)

Jim Smitherman greeted the Chairman and members of the Commission and introduced himself as being with the Bureau of Air Quality at DEP. He then introduced Colleen Cripps, Bureau Chief of the Bureau of Air Quality. He stated because of the Las Vegas Valley's non-attainment of the National Ambient Air Quality Standard for carbon monoxide, Clark County is required to submit an implementation plan. "State Implementation Plan" is the official word and it is shortened to "SIP" and I'll be referring to that plan as a SIP or a draft SIP. They need to submit that plan to EPA showing how attainment will be achieved. The County expects to submit the plan to the EPA later this summer. In fact, Comprehensive Planning, the authors of the plan, are presenting that to the County Commission today and if it's approved, the public review and comment period will start today as well. The SIP must include control measures designed to bring the air quality into attainment. It must also include contingency measures which are activated if the primary control measures fail to bring about attainment, or if vehicle miles traveled exceed the projections in their SIP.

For the last six months, DEP has been negotiating with Clark County and EPA on control measures and contingency measures. And through those negotiations, it has been determined that a program to test a vehicle's On-Board Diagnostic System, or "OBD" for short, is a necessary contingency measure.

An OBD system is an on-board computer that monitors the emission control equipment on model year 1996 and newer vehicles and it will record a code if there's a malfunction in one of the devices. The proposed amendment directs the Department of Motor Vehicles to develop test procedures and certify equipment for the OBD II test program.

As proposed in this regulation, the tests would apply only in Clark County because it's a contingency measure for Clark County's SIP. Consistent with Clark County's SIP provisions, the regulation would be activated if either of two things occur: (1) monitoring shows that the carbon monoxide concentrations exceed the national standards, or (2) if the actual vehicle miles traveled exceed the projections in the SIP. If neither of these things occur, the regulation would go un-implemented.

The Division held workshops in Las Vegas during May and early June. In addition to the SEC mailing list that we got from David, we sent notices to all the smog-test stations and we thought that was important because they were going to be directly affected by what would eventually happen if this regulation was activated. We got the mailing list from the Department of Motor Vehicles and there were 400 some-odd smog shop addresses on that list. We were joined at the workshops by representatives from Clark County Comprehensive Planning and the Department of Motor Vehicles. Twenty-four people attended the two workshops. We went over the regulation language, equipment specifications, costs, equipment replacement time lines and test procedures and other related topics. I think that during the course of the workshops we were able to address all of the concerns and the questions that the workshop attendees raised.

The station owners seemed most concerned about the timing and the cost for replacing their equipment, and also with the actual test procedures. I'd say that, while the station owners were not thrilled with the idea about having to tool up and purchase new equipment, the consensus was that the current instruments

are getting old and they would have to be phased out and replaced over the next couple of years.

It's clear, then, through the workshops that we learned the equipment being used to perform the current smog test is nearly obsolete. DMV had talked about some of them being very hard to get parts and service for. As a result, the Department of Motor Vehicles is in the process of selecting replacement equipment which will be compatible with OBD II testing. The new equipment is expected to be phased in starting January 1, 2001. The period of the phase-in of the equipment will be a subject that I'll talk about in a second.

In addition to this, federal EPA has indicated that they will require OBD testing nationwide starting on January 1, 2002. So this program is coming nationwide soon. That means we may be back with another petition to modify this regulation to go statewide with it which would include both Clark and Washoe counties at the appropriate time and also it means that this regulation really only affects when the equipment needs to be phased in, not whether or not it would need to be phased in.

At the workshops we talked a lot about replacement phase-in timing and how the different scenarios might affect that. We came up with a chart that shows some time lines for three different scenarios. That's been entered as Exhibit 7. So if you could refer to Exhibit No. 7 you can see that the equipment phase-in starts on January 1, 2001 regardless of which scenario you look at. Scenario 1, if the contingency measures aren't triggered and EPA for some reason doesn't follow through with its January 2002 start date, the phase-in could last for 18 months through June 30, 2002. That would be the longest phase-in period. Assuming that EPA does require the program as they say they will, the phase-in would end January 1, 2001 to coincide with their deadline of implementation of the program.

Then the last scenario, number 3, shows that the earliest the new equipment would need to be online is October 2001, only three months earlier than the EPA program date--and that would only happen if, like I said earlier, the CO standard, the carbon monoxide standard was exceeded or the vehicle miles traveled projections are exceeded. Clark County has said that they don't expect either of those to happen. There has been no carbon monoxide exceedence in Clark County in the last two years or the last CO seasons and they don't expect an exceedence this winter. The indications are that the measures that they currently have in place are solving the carbon monoxide problem. Similarly, the county does not expect the vehicle miles traveled projections to be exceeded any time soon.

In closing, Clark County needs this regulation to support the approval of their carbon monoxide SIP. They have indicated their support in a letter of which you have a copy. It's been entered into the record. So, we are therefore requesting your approval of this petition. I have one minor modification that I'd like to bring your attention to though. It's just a small language change to delete four words. It's in Section 4, Subsection 2. Okay that subsection reads at least in part, "The actual vehicle miles traveled exceed the allowed deviation from the projected vehicle miles traveled . . ." and so forth. What we'd like to do is eliminate the words "the allowed deviation from." Clark County requested this change to make the language consistent with the what the Clean Air Act reads. This change was requested by Clark County to ensure that the language is consistent with the Clean Air Act reads. And so with that minor modification,

we request your approval of the petition.

Commissioner Johnson asked if this regulation was to be implemented, what percentage of the cars and what's the decrease in potential carbon monoxide to be achieved by fixing those?

Mr. Smitherman answered I don't know the exact number or percentage, but in our conversations with Clark County Comprehensive Planning, the improvement in carbon monoxide immediately would not be great because 1996 and newer vehicles are some of the cleanest cars on the road. But the benefit would be in the out years, 10 to 20 years out when those cars have been on the road for a number of years and their OBD systems are still indicating that there's a malfunction in the emissions system. Those would be flagged and repaired as these cars age and their emissions become worse over time. Plus, the percentage of those cars on the road would be a lot greater.

Commissioner Johnson stated okay, but they're going to be caught, if their gross, or if they're exceeding the standards in the normal emission check, the '96's would be caught anyway, right? If they were exceeding the standards, so we're talking about fairly small improvements. If you have a 2000 car, if it's malfunctioning then you have potentially a significant producer that won't be detected until it comes under the two-year or whatever the age is. Is that correct?

Mr. Smitherman answered that's correct. Again, a comment along that line. That two years that they're exempt from having the check done, Clark County feels that when there's a malfunction, there's an indicator light on the dash that goes on and a car that's that new likely will still be under warranty and an owner will be diligent enough to take it in and have it repaired even though they're not subject to the OBD test. So, the majority of those should be caught.

AC Coyner called for questions or comments from the public.

Robert Hall introduced himself as being with the Nevada Environmental Coalition. He stated we are concerned about these regulations as an environmental group. The problem that we have here in the valley can best be described by two documents that are on our new Web site. The first one is a 56 page report that the Nevada Environmental Coalition did on the Clark County Health District Air Quality Program here. And our Web site, incidentally, is NECNEV.ORG. The second one is the (inaudible) Senate Bill 432 report which is the draft report. All four volumes are on that Web site also. CO is a problem of airports, it's a problem with off-road equipment to a certain extent, depending on even diesels put out some carbon monoxide. It also is a problem with the gas heater. A lot of people don't realize it, but suppose you have a half a million homes in the valley and you have an 80 percent gas heater in the home, and you have a stove and so forth. If you put a pot on a flame on a stove, the curve on carbon monoxide goes straight up as you place that pot on the flame. In other words, as the flame burns cleanly, you're not getting much carbon monoxide. But as soon as you disturb that flame in any degree, it's going straight up. Now, I'll explain where this ties in in just a second. The point I'm making is that there's a lot of carbon monoxide in this valley that isn't being counted. The airport problem isn't being counted. The sources of CO aren't being counted, therefore all of our numbers are inaccurate.

The next thing is that we have numbers from air quality that say we're doing wonderful. We know the cars are getting better, but this is monitoring being done by the people who are under pressure to perform. It's sort of like a kid in school where you tell the class to give themselves their own grade. The placement of those monitors and how they're handled and so forth is a very sensitive matter in this community and we want it split off so we get some accurate data. The bottom line is we don't think anything here is accurate or means anything. That's the issue. We think the cars are doing the best job of all and are the least problem. I'm talking about cars that they're being produced newly. Now, the old cars, there's no question we have a problem with them. But my point is, we're going ahead on programs and plans when there's an underlying situation that hasn't been cleaned up and taken care of and that's what Senate Bill 432 and all the other things are attempting to address. The bottom line there is frankly I think unless the state or the federal government takes over this program, you're never going to know what's happening and we're never going to clean this mess up. So it does tie in to this matter that's before the Commission. My recommendation is that we take a good long look at this thing and think about it before we do it because we're just building a huge bureaucracy here and a lot of controls which may or may not be needed. Cars of a certain age may need more attention than other cars and so forth. So, I just wanted to bring this matter up that we have a concern that goes far beyond this and it does address CO and other air pollution issues.

AC Coyner called for questions from the Commission for Mr. Hall. He then called for questions or comments from other members of the public regarding the petition. Since there were none, he called for a motion.

**Commissioner Johnson moved for approval of Petition 2000-07, LCB File R-055-00 with the noted amendment striking the four words from Section 4, Subsection 2.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item No. II.B. Petition 2000-08.** (**Petition 2000-08 (LCB File R-087-00)** proposes to permanently modify NAC 459 by amendments to NAC 459.95334 to increase fees currently assessed under the Chemical Accident Prevention Program (CAPP). The regulation provides for an increase in annual fees for the period until June 30, 2001 and then again on July 1, 2001.)

Mark Zusy greeted the Chairman and members of the Commission and introduced himself as the supervisor of the Chemical Accident Prevention Program in the Bureau of Waste Management. He then began his overhead slide presentation.

I will note that there are two slides here, numbers 4 and 9 which have tables and I have enlarged those tables and appended those to your handouts as well so you can refer to those so that you'll be able to read those as we go along.

AC Coyner explained that's Exhibit 9, Fee Increase Proposal, in the upper left-hand corner, and as Mark noted, the two tables are enlarged on the back of that handout.

Mr. Zusy continued. Before I proceed I just wanted to note that we're proposing a fee increase for the Chemical Accident Prevention Program. And what we're attempting to do here is adjust the rate structure such that in the future when we have variations in workload, number of facilities, the complexity of facilities varies, the rate structure that we're proposing is intended to go up or down as necessary to provide the necessary revenues. So we're trying to do something here that will work so that each time we do have fluctuations in the number of facilities, we're not going to have to keep coming back repeatedly for fee increases.

I just wanted to note before we got into this that this fee increase applies to the currently regulated community only. We have, obviously, enabling statute as well as regulation. In regulation we are covering facilities that have specifically listed highly hazardous substances. We have been authorized in statute to regulate explosives manufacturing. At this time we have no regulation for regulating explosives manufacturing. That's going to come in a couple of months and I'll talk about that a little bit later. But, as we are proposing these fees increases right now, they do not apply to the manufacture of explosives. So I just wanted to be clear on that before we go forward.

The fee increase is necessary to sustain an adequate level of program oversight. Our program is actually totally fee funded and what I'm talking about is for the implementation: conducting inspections, working in the facilities. I'm going to talk a little bit later about some different grant monies that we got from the EPA, but those were not for implementation. So the program is totally fee funded.

Program expenses are driven by salary, fringe, and indirects; it's personnel costs to the tune of about 90 percent consistently over the years. So, basically, the people are what drive our program expenses. We are currently staffed with three engineers and one clerical position. With this fee increase, what we're looking to do is to generate enough revenue to just fund two personnel: two engineers and one-half clerical position. So, we're increasing the fees and we're funding fewer people. I'm going to explain that on the next slide. The only thing I wanted to note is that we have not raised the fees in this program since it was started in 1991.

Our program assessments, or the fees that we charge, have not exceeded the program expenses since 1994. But what we've been able to do, actually, is delay the need to seek a fee increase. There have been several things that have helped us do that. We were provided a pretty good startup from the legislature when it was passed enabled us to generate a fair amount of funds to get started with. So that helped us continue on without a fee increase. At times in the program we have kept staffing level, well we've always tried to maintain staffing level at the levels we needed, but we have always worked to keep it at a

minimum. Never less than two engineers, however. Another thing that also helped - we had \$150,000 grant from the U.S. EPA. This was related to the Federal Risk Management Program Development. It's a federal program by the EPA which is very similar to our State Accident Prevention Program. We're currently in the process of seeking delegation for that program. They'll give us the authority to implement that program. In doing that, they provided us funding to help us with statutory amendments that were necessary. The regulatory development, if anyone remembers when I was here last April we had a very extensive regulation modification package. So, they helped fund that as well as pulling together the delegation package that we had to submit to them. So it was really program-development-type things; it was not implementation money.

Since our program is driven by personnel, I just wanted to go through and explain how we've arrived at the number of people we need to do this program. The program inspections really commenced in Fiscal Year '94, everything else was preliminary. So the inspectors, myself, and my staff were hired in Fiscal Year '94 to implement this program. We started with two plus professional staff; we had three personnel for awhile there plus some clerical help. We reduced to two engineers and a one-quarter clerical position in Fiscal Year '96 and also in '97. During that time we basically had two full-time engineers. One of those two engineers was very involved in a lot of other outside issues, statutory development and other things. So we really did not have two full-time engineers dedicated to program implementation, doing program inspections, doing outreach, conducting workshops for the regulated community. And we found that we had a hard time keeping up with the inspections and doing the type of inspection, a thorough inspection we wanted to do. In Fiscal Year '98 we increased to three engineers and one clerical position. Well, you could see that on your handout. You're not going to see it on the screen. We were anticipating, with the delegation of the Federal Risk Management Program, to get an excess of 100 facilities. So we were staffing-up for that. What ended up happening was through the federal program some exemptions were gained. The LP Gas Propane industry ended up getting an exemption from the federal program. The state program followed suit. The net result was that we did not see that increase in facilities. As a matter of fact, our regulated community has held pretty steady at about 40 facilities throughout and that's what we're projecting on into the future as well. So, we're at a position now where we don't really need three engineers for program implementation. What we've been doing the past two years with the three personnel, one engineer, primarily myself, has been dedicated to the regulatory development like last year. In the '99 session there was quite a bit of work done as a result of the Sierra Chemical explosion and we had some modifications. So I've been tied up on several other things. We have two full-time inspectors and that is working just right for the level of facilities that we have right now.

In terms of the future - we're going to talk about how we're going to phase this fee increase in place and how it's going to cover two engineers. But, for next year what we're looking to do is retain three engineers and one-half clerical position. So that's starting July 1. The one engineering position is going to be partially funded by another EPA grant. What we're looking to do is develop some audit checklists, some things to help us improve the way we do our inspections, become more efficient. The

EPA is going to fund close to half a position to do that. The other half of that position is going to be dedicated to regulatory development of items related to the '99 legislative session. That will leave two engineers and a clerical position to be dedicated to CAPP implementation.

In the following fiscal years, 2002 and beyond, we are basically going to go with two engineers and a half clerical position. There is a potential to maintain that third engineering position. That will be tied to the new regulations and the other program requirements that are coming. And the very last slide I have here I'll just talk to you briefly about what that involves.

I'm on slide 7 now. We are going to be phasing in a fee increase over the next two fiscal years. This is our proposal. What we're looking to do is take advantage of prior year carry-over and also work with an anticipated \$50,000 EPA grant. I say it's anticipated. We don't officially have approval, but the money is available and they said that money has been set aside for us so we have reasonable assurance that we are going to get that money. Well, you can't see the carry-over at the bottom. What we need to generate in terms of revenue, we need \$230,000 in Fiscal Year 2001 and about \$275,000 to \$280,000 in Fiscal Year 2002 and beyond.

Before I talk about the amount of the increase, I just wanted to note that: (1) these fees are charged annually. So what's calculated here is assessed to each facility on an annual basis. And before I talked about the amounts, I just wanted to either refresh your memories or inform you as to the different levels in the program so you can understand who is being charged what. The facilities in our program are assigned to different tier levels. We have a Tier A and Tier B, Program Level III, which are essentially the same. The facilities that fall under this category represent what we consider to be the highest hazard. They have the greatest potential for off-site impact, to hurt the public. We have the most stringent program requirements there, and consequently, they really involve the majority of our inspectors' time. Most of the time is dedicated to those plants. We have a Tier B Level II category which is facilities that represent a slightly lower hazard. The program requirements are not quite as stringent and we don't have any facilities that happen to fall into that category right now. Then we have a Tier B Level I. These are facilities that may have a lot of material, but they're remote. They have no off-site impact. Primarily what we look at there is their emergency response coordination. We don't get into accident prevention. There's not as much interaction on the part of our inspectors at that time and our fees reflect that.

Now I want to just talk about the fees. Our fee has two components: there's a base fee and a unit fee. The base fee is a single fee that is assessed per site. So if a facility falls in a Tier A and Tier B Level III category, they would be assessed under the current scenario \$3,100 annually regardless of how much material they have, how many different manufacturing processes they have. So it's assessed per contiguous area.

The second fee, the unit fee, is based upon quantity of substance. A unit is actually a threshold quantity of substance. In our program we have hazardous substance lists, specific chemicals. Each of those chemicals has a threshold quantity associated with it. If a facility has at or above that threshold quantity, they're in our program. In order to determine a unit, a unit is equal to a threshold quantity of that

material. For example, chlorine, the threshold quantity is 1,500 pounds. Fifteen hundred or above, you're in the program. If you have 1,500 pounds, you have 1 unit. If you have 3,000 pounds, you have 2 units, and so on. So that's how the number of units are figured.

In terms of dollars we are proposing to raise the base fee in just the Tier A and Tier B, Level III facilities. We're not going to raise the base fee in Level II or Level I and we are proposing to phase that in. It's now \$3,100. We are proposing this next fiscal year to raise it to \$3,600 and the following fiscal year and thereon to \$4,100. The unit fee is currently \$10.50 per unit. We are proposing to raise that to \$18 per unit in this upcoming fiscal year and \$23 per unit in Fiscal Year 2002 and beyond.

Okay the impact of this fee increase. What we're doing with this fee increase, we are generally shifting the burden for program funding to the operators with the larger quantities of hazardous materials. They're generally the larger operators, the ones that get more of our attention. We spend more time there. They have the largest potential impact on the public as well. And that's the net result of our fee increase.

On the next slide, and this is the last page of your handout, it would probably be easier to refer to that. It's set up, on the left-hand side you can see the different number of units. I've grouped the facilities into different categories. Those with less than 10, less than 100, and so on. The parentheses represent the number of facilities that are in or the number of facilities that we anticipate being in each of those categories. Then the next column is the average fee that they're currently paying and then in each of the two following fiscal years we have the new average fees, increases and percent increases. I did want to note that we do have explosives listed there. Again, we are not proposing any type of fee on explosives manufacturing at this time. But, of course, we will be charging fees to include them in our programs. So what I wanted to do was at least acknowledge through this fee structure determination that they are going to be contributing something and they are going to pose a workload on us. So I did put some amount in there. When we come forward with our new regulation I will actually propose the fee that we choose to charge that industry, or that we propose to charge them. So, it's up there now just to acknowledge that they are part of the program. A couple of things I wanted to note, an overall fee increase is not shown on this table, but if you were to go down the column of the 10 units overall fee increase is 34 percent, the 100 units is 44, 500 - 74, and the 500 plus is about 100 percent. So, they're being doubled. The other point to note is the Level I facilities, the ones with a minimal involvement. If you do the math you're going to get about 69 percent. There are ten facilities there. One of those ten facilities has a large number of units. So they have really high fees because of the large quantities they have. If you were to factor that one facility out and look at the average increase for the other nine, it's 27 percent. So, it's considerably lower than the others.

Okay in terms of outreach - we sent several letters, one workshop notice, and one explanation letter talking about the things we have been discussing here and we conducted workshops in April. We hold workshops in three locations, typically Vegas, Carson City and Battle Mountain around all of our regulated community. The regulated community generally understands the need for the increase. The math is pretty straight forward. They don't argue that we need a minimum of two inspectors. They accept that. Some of the main questions they really have were things along the lines of other funding

sources. "Can't you get somebody else to pay for this?" They were interested in things like that. General fund, EPA grants, and I've already noted the EPA does not provide grant funding for implementation. The other thing they were interested in was the pending regulations. They talked a lot about that and wanted to know more about that. So those were kind of the main areas we were talking about after I went through and presented our case for the fee increase. We essentially had two written comments. One comment, and I believe these are in the exhibits, and I don't know the numbers David, Aervoe and NMA?

Mr. Cowperthwaite answered Aervoe is Exhibit No. 2 and NMA is Exhibit No. 3.

Mr. Zusy continued. First, Exhibit 2, the letter was from a plant that is new to our program, do not have a lot of interaction with that plant yet, and since then we've gone out and worked with them. Their initial impression was that they would do an analysis in-house, submit a report, and they would be done. Our program is an ongoing program where we go out and audit the facilities annually and evaluate all their different accident prevention programs, procedures, training, maintenance, emergency response preparedness. Once we got out there and talked to them and showed them what we do and how we work with the plants to help them improve their programs, they were not as concerned and did not reply with the same tone of that letter. So we had follow-up with them.

The second letter was from the Nevada Manufacturer's Association. It's an association that, I don't know if all, but a majority I would say of our CAPP regulated facilities belong to that organization, and if the Commission would allow I would like to read that letter into record.

AC Coyner asked has the Commission had a chance to look at that letter and get the substance of it? We're talking about the Nevada Manufacturer's Association letter. I think we're okay with that Mark. We've scanned the letter. I don't think you need to read it.

Mr. Zusy continued. Basically, the Nevada Manufacturers were not opposed. They understood the need for the increase and they prefer to have one comprehensive program in place that's funded to do this rather than several federal agencies coming in and doing parts.

One more slide and this is not related to the fee increase, but I did want you to know that you're going to see me again in a couple of months. We have some additional regulatory modifications that we are going to have to propose. These are a result of modifications to our statute in the '99 session. One will add the manufacturer of explosives to our responsibility. We'll be looking for Accident Prevention Program implementation in those plants. With those regulations we will be proposing program requirements as well as a fee structure. So that's when the fee structure will come in for those. The second item is that any new plant that's going to build in Nevada that has one of our listed chemicals is going to be required to obtain permits to construct and permits to commence operation from us.

That's the item I was referring to earlier where we may need to retain a third engineer. I anticipate that we will and that has separate funding authority with it. So, there will be fees with that as well.

Commissioner Iverson stated again, in just looking at your budget you prepared here, (inaudible) Nevada Manufacturer's Association, also I think from a few industries, it sounds like you have a good rapport for the fee increase and I understand the need for a fee increase. But you're talking about doing away with one engineer and in reading those comments it sounds like this industry wants that inspection. It also sounds like they look at that inspection as the necessary part of their business. And when you drop one engineer, I think you know, you have to really look at that and say can we really adequately cover our inspection needs? But your budget is more concerning to me. I can see where you dropped one engineer in FY '02 because your expenses come down by \$50,000. Now I'm assuming that's fringe and the different things we're talking about. And then the second year you're exactly the same amount as far as expenses at \$272 for salary. We know that in State government there's always going to be increases and unless these employees are different than other employees, we know there's going to be an increase in their salary of 5 percent a year if they're not at the top of the pay scale. If they are at the top of the pay scale there's also room for legislative raises for state government. Alan, and all of us who are in fee-based agencies, who have fee-based type of programs have to watch that reserve. Regarding your carry-over, I'm looking at these numbers where you drop down to \$20,000 for carry-over in this program down in FY '01. That seems like a very small amount. Now I'm assuming because you haven't got anything in penalties there, that you're going to build in some penalty money that would help add to that reserve. But, really when you take out these numbers and you look, you've got '02 and '03 basically the same revenue and the same expenses. We know the expenses are going to go up just because of operating and everything else. I hope you're not cutting yourself short on this with your fee increase because I'm sure that these industries who have supported you want to make sure that they still can get the same type of service if not better service since they are paying for, since they are increasing their fees. And everything seems to be the same. And I've never seen a state budget that's the same in two years. There are maintenance things that we have to add on to this. I guess you're only showing 01 or salaries in this. You're not showing operating, in-state travel. You're not showing any of that in this budget?

Mr. Zusy answered no, that's a bottom-line expense number. That includes all the categories and I'll also note that I've built 10 percent contingency on the bottom-line expenses into these numbers and that's part of the reason I did not get too concerned about escalating the amount from one year to the next. All of my people are topped out and so I've assumed topped-out salaries for this. We add 10 percent contingency to the bottom line in the reserve that I'm assuming when I figured these fees. In addition to that, you can see that the carry-forward is accumulating about \$20,000 per year. So I've built fat into it in a couple of places. We thought about an inflationary factor in adding that into this and I thought it might be better if we do need to make some kind of inflationary adjustment that would not happen. We can absorb the 2 percent over a couple of years within the budget here. And I thought if we needed to adjust the numbers for inflation we could do that a little bit later and just come back and we would not have to ask for the magnitude of the increase that we are now.

Commissioner Iverson asked if you did run out of reserve, where would you go? You're telling us that

you are going to get a \$50,000 contract from EPA and I guess you've already signed the papers and you know it's coming. But, if there was a problem what would happen if your reserve was not \$20,000? Do you have other sources of money to turn to to keep this position and program going? Or would you have to come back and look for another fee increase?

Mr. Zusy explained we have a letter from the EPA stating that they have the money put aside for us. We have the grant application going forward through EPA Region IX. We have a letter from an upper level individual that would be administering it stating that they do have the money put aside for us for this purpose.

Commissioner Iverson stated I guess my only concern is it seems unusual that you're going in for a fee increase from this industry, and at the same time you're cutting a position that would provide possibly more adequate coverage of their inspection and working with this industry. So I would have thought if you have gone in for a fee increase, you would have at least maintained your engineering staff to assist this industry, rather than cutting one.

Mr. Zusy explained until presently, we've never had two full-time engineers doing inspection work under the program. We've always had considerably less, primarily because of my time being tied up in considerable modifications to this program over the past several years. So, where we're at right now is good with the two engineers. We're doing some other things and that's really the second bullet point I had here. They are geared toward primarily improving performance or quality, developing quality programs at the facilities and they are also geared toward helping us be even more efficient. We are developing these detailed audit checklists. We have a lot of them in draft form right now. The EPA is providing us funding to help us work on and refine further and they're going to help us computerize those, get them into a database. With these checklists we have found that our time and the facility's is better spent. We don't spend less time there, but we get into more things and evaluate their programs in a more thorough manner. So, we have gotten more efficient and we're finally up to two engineers doing this full time right now and it seems to be working out really well. So even though you see we're going from three to two on this program, realistically we've never had three engineers doing this type of work, quite honestly. We've never had more than two. And I think, given what we're trying to do with the checklist and improve that, I think it's going to get better. The other thing to point out is this Performance-Based CAPP Recognition Program. The industry expressed an interest in this and has asked me about it. Industry basically wants to be recognized if they have exemplary performance. We're currently working with industry to develop a program that has some very high standards and they will be working internally to meet those. That's going to help us out tremendously because if they do that and meet those program requirements, we will not have to spend as much time auditing there. We'll be able to see it in place and it's just going to be a very beneficial program. So, we're working on program quality which is important and we're working on efficiency of our inspectors. I'm confident that with those two things together we can continue in this manner. And if we do get into a situation where we get more facilities in the program, we'll be able to eventually fund that other position or work possibly some other way. If we only have a couple of additional, we can't quite handle them, we always have options to do things like contract or work with personnel from other bureaus or other programs.

Commissioner Iverson stated I've been in the regulatory business now for five years with the Department of Agriculture and prior to that with the Division of Minerals. That situation was a little different because we had regulatory responsibility for a few industries. But one of the things that I recognize in working with the Department of Agriculture, especially industries that deal with chemicals, industries that are dealing with hazardous materials or almost any industry that deals with public safety is that those industries want a good inspection program because it provides them the opportunity to showcase what they do as an industry. It also provides them some guidance so that they can stay up with modern technologies, modern knowledge about certain chemicals or certain hazards. The other thing that surprises me is that they're perfectly willing to pay for a good inspection program because it does those things for them. It also keeps a lot of the primacy here in the state rather than having some of the primacy go out of state into the federal government. I guess all good industries want to make sure that they continue to be good, solid industries and perform those things that they need to do. I have no concerns if you don't have any concerns. When you lose an engineer you lose the ability to go out and do those inspections. We go through the same types of issues in many of our programs. I commend you for not adding any penalties in the next two years. I'm assuming what you're going to do with your two major engineers is spending all of your efforts up front training and providing assistance so that your penalties will go down to nothing.

Mr. Zusy stated yes, we work proactively with clients. Quite frankly, it would be very easy to go in and find things out of compliance in each facility, but they are always more than willing to work with us and to bring those things into compliance. We've always found that is the case and it's the most effective way to get there, rather than come in and assess penalties up front.

AC Coyner asked in the number of facilities as I look at them from 1992 to 1999 basically ranges 44, 34, now we're at 34 in '99, 41 now in '00. Is that a static regulation? Am I seeing businesses going in and out of business in the state or is the population changing due to regulation?

Mr. Zusy answered no. One key thing happened: in '98-'99 time frame, you saw it ramp down. The EPA, with their Risk Management Program, had a requirement that facilities file what's called the Worst Case Release Scenario with the agency and at one time they were going to be posting that on the Internet. But nonetheless, they are obligated to present the scenario and it would be their largest tank rupturing. What would happen? How far would that toxic cloud go out? How many people would that impact? They were obligated to file that report and to hold public meetings and inform the public as to those consequences. In Nevada, what happened was there were a lot of companies that decided, "Can we do this thing better?" Primarily it was the water treatment industry. They used a lot of chlorine to disinfect water and sulfur dioxide to dechlorinate. They ended up going to alternative chemicals such as sodium hydrochloride bleach and sodium bisulfide for the dechlorination. So they went to alternative chemicals and we saw a significant drop. We had close to two dozen water treatment plants in our program initially. We're down to two. So a lot of them went to alternative chemicals. We did not drive business out of state. They went to safer alternatives with a very positive impact for the public. I think where we're at now is where we're going to be. I think we're going to hold reasonably steady there and, if anything, increase.

AC Coyner stated my question was running to the economic climate in the state. You know, essentially, we're a growing state. We know that. But this level indicates some static nature to it. Is it a business-friendly state from this perspective? Or is it just the fact that they're going to other alternatives that take them out of the program? I think that's what you're telling me.

Mr. Zusy answered yes, that was in the past. Will that increase in the future? Is that your question?

AC Coyner stated I'm just a little worried about the economic climate, the impact of the fees, and so forth and so on. Is that affecting business moving to the state?

Mr. Zusy explained the actual program fee is very minimal compared to what it costs to put a program in place. You can ask some of the larger facilities in our program. They may pay \$5,000 to \$10,000 to us in a year for a big plant to have us come out and do the audits. But they'll spend \$100,000, a quarter million, some places have spent a couple of million dollars just doing different things, putting safeguards in place. The things related to our program can be a lot more expensive than our fees and realistically those things need to get done in order to operate safely anyway whether we have a program or not. But I don't think our fee alone would impact the facilities.

AC Coyner stated that goes to my next question and reflects a little bit on Commissioner Iverson's comments. I note in the Aervoe Pacific Company letter that they indicate that they spent about \$30,000 to \$35,000 to complete their RMP for the federal EPA, yet our fee is about \$3,000 plus or so for the state. So we sit here and worry about \$1,000 here, \$1,000 there, but it looks like at the federal level they're getting hit with significant amounts of fees. Is that RMP subject to change? Is it an annual fee or is that a one-time fee? Or do they have an update fee that they pay for that?

Mr. Zusy answered no, that's part of the implementation cost I was talking about. They pay a consultant to get in and help them to develop their procedures and their training program and to do their hazard analysis. When I talked about a facility spending \$100,000 to do all the things they need to do to come into compliance with our program, outside of our fees, that's the type of thing I was talking about. In the case of Aervoe, they only had to spend \$30,000, is what he was saying. Whereas you get into some bigger plants, like some of the BMI companies, who have spent in the millions for some of the things that have gone on.

AC Coyner stated we know for a fact there's three explosive manufacturers in the state. Is that a projected number or you know this is how many will come in?

Mr. Zusy answered actually I think there may be four now. We have three ammunition manufacturers and we have one air bag explosives manufacturer, or booster manufacturer.

AC Coyner asked when it comes in as separate chemicals and it's sort of mixed on site, how does that work out? I mean if you're not really manufacturing the product at one location, a final product so to speak, does that make a difference with regards to inspection? In some cases you may be making

explosives on site final product, other places you may be using components to make the explosive at the site it's being used.

Mr. Zusy explained if you're manufacturing the physical explosive, that's a manufacturer. If you manufacture an explosive device, you put different explosives that are already manufactured and you just put them together inside of some type of container. That's a manufacturer of explosives as well and they're both covered.

AC Coyner asked and that's the three that we're referring to here in that chart that you're projecting?

Mr. Zusy answered yes.

AC Coyner asked and I'm sure we'll hear more about that as you come to us with that?

Mr. Zusy answered yes.

AC Coyner asked do each of the now 41 facilities get inspected on an annual basis? What's the frequency of visit?

Mr. Zusy answered about 30 to 31 of those will see us annually. There are 10 that are those Program Level I's that are fairly remote and we were going to go see them less frequently, once every couple of years just to ensure that they have a coordinated emergency response plan. They have a responding organization and they have the capability to do what they need. But we do not get into their procedures and training and maintenance and other parts of our program. So, we have 30 facilities we visit at least annually. I will note, though, that of those 30 a majority of them see us at least twice a year because a lot of times they have quite a few things that they've committed to do and we visit them in the interim just to keep up with all the different requirements. And a lot of times when we're down, say we come down to Las Vegas and we're all from Carson City, we may have a purpose at one or two plants, specific inspections, but we'll drop by other facilities just to work with them briefly and see how they're going on things. We ended up with, for example, in this fiscal year we've conducted over 60 inspections, or 60 visits, some of those were two people. We've been to a lot of places more than once.

AC Coyner stated when an accident occurs and this program is designed to prevent accidents, the first question that always seems to be raised is, "Well, where were you? Were you there? Were you present? Have you been inspecting that facility?" and so forth. So, in these days of letters and E-mail and phone calls and so forth I still think the physical presence is very important in terms of an on-site inspection.

Mr. Zusy stated I agree wholeheartedly and that goes through my mind every time we hear about an incident. It's very important to us to be in those facilities and to stay on top of things and we are very conscientious about that.

AC Coyner called for further questions from the Commission. Hearing none he called for comments from the public. Seeing none and hearing none he closed the public comment period and asked for a motion for approval from the Commission.

**Comm. Crawford moved for approval.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item II.C. Petition 2000-09.**

**(Petition 2000-09 (LCB R-090-00)** is a permanent amendment to NAC 519A.010 to 519A.415, the mining regulation and reclamation rules. The amendments include an added definition for "process fluid stabilization," the establishment of a readiness fund for emergency fluid management with fees in the year 2001, 2002 and 2003. Amended is NAC 519A.345 by allowing surety's to be used for process fluid stabilization. NAC 519A.360 is amended to limit only the cost of reclamation activities in the calculations of the aforementioned fees.)

Mr. Biaggi introduced himself as the administrator of the Division of Environmental Protection. He stated due to some time constraints by some of the individuals in the audience this morning I would respectfully request that we move to Item IV. of the agenda rather than Item II.C. at this time. It will accommodate the schedules of those individuals and I'm sure would be greatly appreciated.

AC Coyner asked if there was opposition from the Commission. Since there was none he moved to **Agenda Item IV. Request by Southern California Edison for a variance to the opacity requirements for the Mojave Power Generating Station in Laughlin, Nevada.**

Nader Mansour introduced himself as representing Southern California Edison Company, which is an owner of the Mojave Generating Station, part owner of the Mojave Generating Station and the operating agent of that facility. He then introduced Mr. Tracey Bibb from the California Independent System Operator. He stated before we start I want to thank the Commission for allowing us to be taken out of order on this item. We will try to be very brief. We also have other folks in the audience here if you wish to get into more details about the air quality implications of our petition. Let me turn it over first to Tracey Bibb to give you an overview of what the issue is and why it is necessary for us to have the variance that we are requesting in this petition. With your permission I'll just put up the overhead.

Tracey Bibb introduced himself as being the director of engineering and maintenance at the California ISO, the California Independent System Operator. He stated I'm here today to support a variance for the Mojave Generating Station. I'd like to give you a quick presentation of why we feel this should be.

I'll give you first a little history of the California ISO. I passed out these slides to you, each of you should have them. The California ISO is responsible for reliability and we do reliability through markets. We run daily markets. We run hourly markets and we also run a real-time market to make sure that the energy that is needed is procured and then delivered to the users of the energy. So we ensure reliability on the transportation system operations. My particular responsibilities to the California ISO are to ensure that all systems, all transmission facilities, voltage, reactive margins are met, that should anything be identified, that we immediately take precautions, procedures, upgrade the system to make sure that those things are mitigated very quickly. We ensure an open transmission access. That means that we facilitate a market to where once a person meets certain requirements they can bid into the energy market and we are blind to the producers, we only care about reliability that we procure the right amount of energy. We facilitate and rely on competitive markets as I just mentioned. And part of that is innovative through consensus. And what that means is that when we identify areas in the energy market that are not providing certain ancillary services, that we change the market, that we go back to our board of governors, back through the state court or process and do those things which we feel are necessary to procure or change the market in a manner that is reliable for the end user.

Our key functions - we schedule energy from all of our inter-ties from all of our scheduling coordinators who are those who procure the energy then resell it to customers. We also do congestion management, meaning that when lines become overloaded, our facilities become overloaded, we have certain mechanisms in place that allow us to unload those overloaded facilities so that reliability is again met. We do wheeling. We do a lot of wheeling through the State of California to Arizona, to other states that border California as part of our function also. We run an ancillary service management, meaning that we procure operating reserves. Those reserves, and I'll talk about those more in a minute, are the reserves that are required should we lose major components of the transmission system or should we lose a major generation that is feeding our system and those margins are set down by the Western Systems Coordinating Council. That there's a minimum reserve that has to be met so we procure those reserves and, again, we procure them in a day-ahead market, we procure them in an hour-ahead market and we also procure them on a real-time, real-time being right now. We'll make phone calls to procure those additional ancillary services to keep us at the margins which the Reliability Council has said we must adhere to. The real-time dispatch I mentioned. We make sure that things happen on a real-time basis and goes for reliability, it goes for the market, and of course we do financial settlements. We coordinate transmission planning, that "TX" stands for transmission planning. What we do is we have a planning department that looks out over the course of up to five years out and will make recommendations on weak spots in the system, growth potential, growth in certain areas and then we'll plan those facilities, get the state quarter buy-in, state quarter processes, and then hopefully build those facilities or come up with alternatives. And the other thing that we do is we do WSCC and WSCC stands for Western Systems Coordinating Council and they are the council, there's nine of these regions in the United States all of whom are under the umbrella of the National Electric Reliability Council or commonly known as NERC

to throw out a few more acronyms to everybody. But the WSCC security coordinator is a NERC function by the National Electric Liability Counsel that says that WSCC security coordinators have the responsibility to ensure that. For example, in the western United States, there are three security coordinators and the California ISO happens to be one of those. The second one is in the Pacific Northwest and the third is in the Rocky Mountain Southwest. And those three security coordinators are responsible for communicating back and forth as to the condition of the electrical systems in their respective areas. So, the California ISO, those are the key functions of our corporation.

In 1994 the California PUC released its, we'll call it the Landmark Blue Book Proposal which mandated deregulation. And it should be noted that deregulation in California is unlike deregulation anywhere else in the world. We are totally deregulated, not only for energy, but for ancillary services. That's something that's not done anywhere else in the world at that time. In 1996 Assembly Bill 1890 was signed by the governor, which basically created the California ISO. In 1998 the California ISO became operational. It was actually April 1, 1998 and we immediately implemented a retail access to all customers in the, for about three-fourths of the State of California. So, the changing times, as depicted here under the "Then" column power generators and utilities were vertically integrated and they, basically the utilities, had generators. They took the generators, transported the power over their transmission lines, or bought transmission capacity and delivered to the customers. In the new world, or the "now" world we'll call it, power generators and power marketers go through what we'll call "scheduling coordinators" or kind of a person that aggregates resources and customers, puts them together and then tells us who they are. And the California ISO then takes those and then we either ship the energy to the utilities or through those energy service providers to the customer so that the generators and the power marketers are now separated from the customers.

What I'd like to do now is to give you an oversight of 1998, 1999 and what we project for the year 2000 for our estimate, the history of our load and operating reserves. In 1998 we had a peak load of 44,927 megawatts on August 3, 1998. That 44,900, that would be I'll throw out some names, the old Pacific Gas and Electric control area, Southern California Edison's control area, and San Diego Gas and Electric's control area - roughly three-fourths of the State of California. Excluded from that, one of the big players excluded from that number would be the Department of Water and Power, or the City of Los Angeles. Their peak load is roughly 4,500 megawatts and when they become part of our umbrella, then our peak loads will exceed 50,000 megawatts for a system, one of the largest in the nation. On that particular day we had in-area generation of 37,747 megawatts and that includes operating reserves and I mentioned those operating reserves earlier. Those operating reserves are mandated and 7 percent is a minimum requirement or the largest contingency. And so a contingency would be the loss of a major generating unit, but when you're dealing with 44,000 megawatts, 7 percent of that is a lot bigger than any single contingency that we may have. So the operating reserves of 7 percent therefore take place over the contingency.

It's also noted that in 1998 we had net imports of 7,180 megawatts. Basically, we had 7,180 megawatts flowing into the State of California to help carry that 44,927 megawatt load. Also, in 1998 we had a load curtailment. The State of California has two ways of curtailing load: one is voluntary, our interruptible load, as we call it, and the three utilities that are under the ISO's umbrella, Pacific Gas and Electric,

Southern California Edison, and San Diego Gas and Electric, total have around 2,800 megawatts of interruptible load, people who have signed up for some type of a discount on their rates to be interrupted. In 1998 we called on over 800 megawatts of that interruptible load because our reserves were falling to a dangerous point. So we have no problem in interrupting this load to keep those reserves up.

In 1999 we had a peak load of 45,884 exceeding the year before and that happened on July 12. Our in-area generation was over 37,000 megawatts, a little bit higher than the year before. The net imports were much higher though, 8,378 and the load curtailments were zero. So in 1999 we carried more load without curtailing an unfirm load and we did that by additional generation and by additional imports into the State of California and that was made possible by, at this particular time, the southwest was experiencing cooler than normal temperatures as well as the northwest at that time so additional energy was available.

For the year 2000 we're projecting a normal summer. We always look at things when we try to forecast what may happen. A normal summer and then a hot summer and we look at this hot summer as being like a one in ten year, one in five to one in ten year. A peak load of 46,254 normal summer. To do that we have to have in-area generation of between 37,000 and 37,000, well almost 38,000 megawatts of in-house generation, or in-area generation with net imports of between 7,600 and 8,400 megawatts and that is to not only carry that load of 46,000, but to carry the required amount of reserves that we'll need to maintain that safe margin as we go across this peak period of time. That's a normal summer.

Now, let's be a little more realistic here. Let's go out to a hot summer. A hot summer we're looking at loads that could be as high as near 49,000 megawatts. And I'll give you an idea you've maybe heard of the heat wave we had in California last week. That was a northern California heat wave. The city of San Francisco experienced all-time peaks in the early part of June. The city of San Francisco exceeded 950 megawatts. That's about 5 percent higher than their all-time peak previously. The Bay Area, which surrounds the peninsula of San Francisco had a peak of over 9,000 megawatts and they had temperatures of 103 degrees in San Francisco. I believe that was the 12th highest in 120 years. So, when we plan for a one in ten years heat storm, luckily that the region that we had last week was just northern not a southern region.

Going back to the 2000 normal summer - when we import (remember I talked before about these total imports being between 7,600 and 8,400) from the Pacific Northwest we usually get between 6,000 and 6,200 megawatts, the Northwest being Oregon, Washington, Idaho and that power flows in from the top of California or across the Oregon-California border. The Southwest on a normal summer would get between 900 and 1,100 megawatts. That power flows in from Nevada, Arizona, through New Mexico, even as far away as Texas and Colorado will flow in. And then other, at 700 to 1,100 would be generation like from the Department of Water and Power in southern California, who is not part of the ISO. That 700 to 1,100 would be additional resources from them or from Mexico would flow into California. That's a normal summer. What we're projecting on a hot summer, and we've seen this before, on a hot summer the Northwest stays about the same, between 6,000 and 6,200 megawatts. What drastically changes is the Southwest. What was 700 to 1,100 now drops to about 0 to 200 and the reason for that is a hot heat spell into California spreads over into the adjacent states. For instance, Phoenix may

be experiencing 115 to 118 degree temperatures or what we're talking about here and at that point, the energy being shipped into California from the previous slide I showed you, now is used internal to not only Arizona but New Mexico and Colorado and those areas there. So, these heat spells or these hot summers we talk about not only encompass California, they encompass basically the whole Southwest, including California is what we've seen. So the resources dry up and that's where our big shortfall comes for California for numbers.

Now, what I'd like to talk about is the stages that we go through. I told you before we have this requirement of maintaining 7 percent operating reserves and I believe you may have a letter and in that letter it will talk about what the stages are and I'll briefly go through that. That's contained in the petition that Southern California Edison submitted. You'll find a description of the various stages starting on page 2 of that petition. What I'll do is I'll briefly describe the stage 1, 2 and 3 and how we see implementation of this variance for the Mojave Generating Station. A stage 1, basically we have three things that happen in a stage 1. First we declare an alert, the California ISO declares an alert. What happens is the California ISO, we look out, we determine what the projected loads may be. And to give you an example, we actually hit 43,500 megawatts last week, in early June. Now if you look back in those slides you'll see what we're projecting for a normal summer, that's not too far off and we're not even in the summer yet. So, we had a 43,500. What the stage 1 does is we call an alert first. What an alert and warning do is alerts and warnings for the California ISO they stimulate the market for us. A message goes out to all of those people that are procuring energy from the different producers and then passing those on to the California ISO. And it tells them that we believe that we're going to have a very high temperature, high loads tomorrow, and we need you to really look at getting your energy into the market. That's what alerts do. Warnings and stage 1's do a couple of other things. They allow us, if we see the market is not responding, once we declare a warning or a stage 1, we actually then can go out on our own, not through these intermediaries and procure our own resources from energy suppliers only after the market has not provided.

So, a stage 1 is declared when the operating reserves are predicted to go below 7 percent or have gone below 7 percent, but remain above 5 percent. At that point there's no customer interruptions in the State of California. It's strictly a way to stimulate the market, allow us to go out of market to buy those reserves that we need. Again, remember the reserves are those amounts of energy being held off on the generators not producing yet, but to be brought up should a contingency happen. Once we go past a stage 1, a stage 2 means that we're going to fall below 5 percent or we have fallen below 5 percent. And a stage 2 is declared between 5 percent and 1-1/2 percent operating reserves. Now, to give you an idea, in 1998, that was our first year of operation in the California ISO, we had eight stage 1's where we fell below 7 but above 5 percent. We also had four stage 2's where we dropped below 5 percent, but did not hit the 1-1/2 percent that triggers stage 3.

In 1999 we had three stage 1's, eight the previous year, but three in 1999 and only one stage 2 in 1999. So far in the year 2000 we've had three stage 1's and we've had one stage 2 already. This one stage 2 in 1999, to give you a little background, is that happened in May, not even in summer. And what happens is we got caught by one of those extremely, a heat wave that should not normally happen in May. What's

happening is all of the generator owners are, or many of the generator owners, take their units off during the non-peak months, in this case fall, winter and spring and what happened was the generators were coming back from their overhauls about the mid or end of May and this heat wave hit at about the first part of May. So we had generators that were not yet back from their overhauls getting ready for the summer months and we also had some forced outages of generators that were unforeseen and because of that we fell below the 5 percent and a stage 2 had to be called this year already. At no time has a stage 3 been called before. Now having said that let me go back to what a stage 2 does. Once we hit a stage 2, that allows the ISO to call the three utility companies: Southern California Edison, Pacific Gas and Electric, San Diego Gas and Electric and we will determine how much additional reserves that we need. Now keep in mind that we've already gone out and stimulated the market. We have gone out and tried to procure it ourselves. We have price caps that we can't pay over certain price caps for energy, but the price caps were such that it's very, very lucrative for the energy producers to sell to us and not hold back because once it hits the price caps they know they're not getting any more. So they sell at the price cap, basically is all it amounts to. So, a stage 1 allows us to do all of those things. When we've gotten to a stage 2 we have exhausted all of those avenues. There is no more energy to get. There is no more appeals. We have been making public appeals. A stage 2 means that now we will go into interruptible customers. As I mentioned earlier, between the three PTOs there's about 2,800 megawatts and in 1998 we dropped about 800 plus megawatts of that. We didn't drop any in 1999 and so far this year we have interrupted because of a local problem only, not a state-wide emergency, but a local problem only to do with San Francisco, we did have to interrupt about 500 megawatts of customers who had signed up for these voluntary load reductions. Now what the ISO, in agreement with Southern Edison is that this variance that we see happening with Mojave Generating System is that we would go through all of our stages, stage 1 and 2, do all those things I mentioned in stage 1. When you get to stage 2 we would go through all of the interruptibles, up to 2,800 megawatts if we had to. Again, we see this as an extreme condition. As I pointed out on my slides where you have a hot summer or maybe other conditions exist where we've lost some major generation or transmission facilities in the State of California. We're going to go through that entire interruptible program of 2,800 megawatts. As you see before you, we've only gone to a maximum of 800. But with the forecast of a very hot summer, we would go through the entire 2,800. After we've exhausted that stack, then we would call on Southern California Edison to then, if we had this variance, to bring Mojave Generating Station above its current limits of opacity so that they could generate more electricity.

Now the other part of this is too is if we're in this condition, what we normally see (inaudible) before is that it's not just a California problem, it's also a Southwest problem. Temperatures are extremely hot because those imports into California have gone way down. So, by bringing up Mojave you could say that it's not only a California reliability issue, it's a regional issue. It's the southwest part of the United States. So, because of that we feel that the variance on Mojave benefits not only California, but the southwest. And to give you a little Meteorological 101 class here, if you recall that in August 1997, was it? 1996? I'm getting to where I can't remember dates now. We had an extreme blackout in the western United States. That blackout occurred because of a problem in the Oregon and Washington area. In the course of 12 seconds put about 12 million people out of power including Nevada, Arizona, California, Utah. The whole western United States all the way down to Baja Mexico and up through British

Columbia. So, we see this as once we've gone through all the steps I've mentioned, that we are basically to the point where our operating reserves are falling and we need to do something to keep those reserves up so that we can always withstand the next contingency. That's a part of planning that we do in the utilities is that as the reserves fall we have to watch out for the next contingency so that we don't have a cascading effect. And that's why we're asking for, or supporting this variance for Southern California Edison and I'll answer any questions any of the Commissioners may have.

AC Coyner called for questions from the Commission.

Comm. Crawford stated this is not something that's just surfacing. I think we've seen this coming for a while. I assume the industry has.

Mr. Bibb stated that's correct.

Comm. Crawford asked what is being done to avoid emergency conditions in general and specifically in relation to Mojave so that we don't have to do variances?

Mr. Bibb answered currently the California Energy Commission is responsible for sighting new generation in the State of California and there are various, I think up to about 5,000, 6,000 megawatts on the books in various stages of permitting at this point. We should start seeing those new energy facilities start hitting the line in 2001. We should start seeing the first 400 or 500 megawatts hit the line in California and then there's two or three big projects to follow afterwards. So, within the next year to two years I believe and I'm going to, from my readings, somewhere in the neighborhood of 600 to about 1,500 megawatts of new capacity coming online in California over the next I'll say 12 to 24 months.

Mr. Mansour stated actually, in the southwest there's probably somewhere in the neighborhood of about 3,000 megawatt that's either in the planning stages or under construction and the shortages that we're experiencing now are likely to disappear within the next couple of years. As for Mojave itself, the plant, as you may be aware, has made a commitment to install new baghouse and scrubbers which, when installed, will be able to reach its peak load or peak output without having to seek a variance. It's only in this interim period, between now and the time that these controls are installed or the time that the additional capacity is brought on-line that this might be necessary.

Comm. Crawford asked what's the projections for the new baghouse and all that to be completed?

Mr. Mansour answered end of 2005.

Comm. Crawford stated so we would be in a variance condition to use Mojave for another four years.

Mr. Mansour stated more than likely only this year, perhaps next year, but that's it.

Comm. Crawford asked and you say that because there is other generation coming on line so that Mojave

wouldn't need to be used for variance?

Mr. Mansour answered correct.

Mr. Bibb stated I have one other comment and I've failed to make it here. The California ISO, as part of a condition, is more than willing to open our books up to show you, should we get into a variance, should you approve a variance and should we have to use it after the fact, we are more than willing to open our books up to you, or actually to any other agency to show what we did to get to the point where we had to actually implement the variance. So, we're more than willing to show you that everything possible was done up until that point where we had to go to Mojave Generating Station.

Comm. Crawford asked Mr. Chairman, what do other down-wind locations have to say about this besides the ones that we've seen here from Bullhead City and some of those?

Mr. Mansour explained Mojave's impact, the prevailing wind is moving towards, during the summer period, would be moving towards the Grand Canyon. The main location where there are large population centers is in Laughlin and Bullhead City between the plant and the canyon. A number of studies have been done to evaluate the impact of the plant on the canyon and the visibility in the canyon and, by in large, all of those studies have concluded that the impact on the canyon is imperceptible. It's in the noise, it's overwhelmed by the plume from the Los Angeles basin as well as from the Las Vegas valley. So, as far as the impact on visibility in the canyon, it's going to be minimal. I'd like to make sure that the Commission is clear about how this variance might come into play and for how long it would come into play. As Mr. Bibb was pointing out, they intend to do everything they can before they call on this additional generation. The current forecast is that this might, there's anywhere between 5 to 10 percent probability that they will need that power once during this summer. We are assuming, for the sake of discussion with the local community, we assume that it will be invoked up to three times during the summer. If it is invoked, the likelihood it will be in effect is going to be for a duration of about 1 to maybe 3 hours. That's when the peak takes place. After that, it drops off. So what we're talking about here is a situation in which the plant will operate normal for most of the time. There may be a chance during the summer for one to three occurrences in which it operates at a higher opacity and when that happens it will do so for a duration of about three hours. So, we're not talking about a prolonged operation. What we're really talking about here is an insurance policy so that if the situation arises we have the capability to help alleviate that shortage. It's not, by itself, going to remove that shortage, but it will help alleviate the shortage. As Mr. Bibb was pointing out, if catching it before circuits trip and blackouts occur, then everything will be smooth, nobody will suffer. If you allow the blackouts to occur, they can cascade and they can come into neighboring states as well as in California and may have an effect on Nevada as well. So, what we're looking for is an insurance policy to cover us for a very short duration, carry us over the peak period and I'll be glad to go over with you the implication of doing that in terms of air quality impacts when you are prepared to do so.

Comm. Crawford asked what's the time of day when this would occur in relation to Mojave?

Mr. Bibb answered normally the peaks occur between 3:00 p.m. and 6:00 p.m. Somewhere in there. It could be from 2:00 p.m. to 5:00 p.m. is the times that, California's three major centers don't have simultaneous peaks. They're about an hour off from each other because of their geographic locations. So, it's when you have a simultaneous peak is when we worry, what we worry about. That's during a heat storm. So, it can range from 2:00 to 5:00 or 3:00 to 6:00 p.m. Usually that three-hour window. A peak usually occurs at 4:00 p.m. or 5:00 p.m.

Comm. Crawford asked the people who, the location for the voluntary reductions, is that usually large businesses or?

Mr. Bibb answered yes. The voluntary load reduction, it can be air conditioning in a residential home, people have signed up to have their compressors turned off or it can be large shopping centers who cut back on half of their lighting. A variety of things, commercial business, industrial business, those type of things. One thing that maybe I should explain, if we get into stage 3, what happens then is all the utilities in California have plans in place to where we get into firm load. And what happens is once we go below 1-1/2 percent operating reserve we will continue to drop firm load and that's customers who have not signed up to be interrupted, will drop as many as it takes to stay above 1-1/2 percent. And to give you an idea of what kind of numbers we're talking about, for instance, with just 100 megawatts, or 100 million watts and 100 megawatts could equate to roughly 30,000 households, depending on what kind of, if it's residential maybe 35,000 households. If it's a mixture of commercial and residential it could be maybe 20,000 meters. And so you can see the impacts if you get into needing to drop 200 megawatts of firm load, the impact could be 65,000 households and you figure 3-1/2 people per household, it (inaudible) about 100,000 people who have some kind of effect, not to mention the way circuits are worked on electrical construction is that not only do you feed households, you feed, they feed traffic lights and other things like that. And so the impacts are great and so using the example if Mojave were allowed to increase their output by 100 megawatts or 200 it could forego that 30,000 or 60,000 households being interrupted along with the various other peripheral other things that go along with the community and those households.

Comm. Crawford asked as I understand then, at this point in time, we would probably only be looking at a variance for Mojave maybe for two summers?

Mr. Mansour answered the request we're making is for only this summer for a four month period and we would reevaluate the situation as we approach next summer and if necessary we'll come back before the Commission and make another request for a variance. One of the things we are hoping we will get from this experience is that we will be collecting data. We've been talking to the NDEP staff and we will be collecting data if those episodes should occur so that we can, if we should come back before you again, we can provide you with real data about what actually happened and what the air quality looked like during those episodes so that you can have something to base your judgement on.

Comm. Crawford asked and you're anticipating that by 2002 there will be sufficient other generation that would preclude the need to, would turn to?

Mr. Bibb answered yes. With the additional generation at 600 to maybe 1,500 in the next couple of years. But I want to caveat to all that is . . .

Comm. Crawforth stated I don't want you to do the caveat.

Mr. Bibb continued. Is that unforeseen outages happen. A good example was San Francisco, I'll use that as a good example. Just last week there was a generator out for an overhaul, it was supposed to have been back a month ago and they extended the overhaul a month because they found things wrong when they got into the generator and into the boilers, and so forth, so they extended that outwards, plus they had two other units that were forced offline because things broke. So now we had three generators off in the Bay area. And because of that, we had to implement that 500 megawatts of voluntary load reductions last week that I mentioned earlier. So, we always allow for a certain percentage of generation to be off in our planning. But not that much in this particular region. The same with when we forecast a hot summer. We believe there may be 1,000 megawatts of generation that has tripped off. All the generators that do business with us have to sign agreements and we look at their outage schedules, their overhaul schedules and if we see someone who's drifting into the shorter months or it could be warm and they're a major player in the market as far as reliability goes we will, two or three months or even six months ahead of their schedule that they submit to us, have them reschedule back to a more, what we feel is a more a better time that does not present these shorter months with these, maybe these freak heat storms that we've seen so far this year. So, that's another thing that we do at the California ISO is that we can shift these and we have done that. And during the summer, there's basically the four or five months of summer because this is a free market and these generator owners have to produce or else they don't get paid now. It's not like before when a generator stayed off line and the utilities collected the money as part of the imbedded rate base and then paid the mortgage on the generators. These people have to produce or else they don't make the mortgage, or they don't make money and they go out of business. So, it really behooves them to get their work done in the off season and be ready to generate in the heavy months when the price of energy goes up, a supply and demand issue. So, we don't see overhauls happening in the summer at all. It doesn't take a real brain surgeon when you own a unit to figure out, don't do this in the summer, do it in the winter. It's the forced outages that will cause the problems. And so the caveat, and why I'm going through all of this is, is that yes, even with its additional 600 to 1,500 megawatts buy the next 12 to 24 months in California, there could be some circumstances where California may be deficient even with these new reserves. Now, again I'm not sure what the plan is for next year to come back and ask for another variance, but this is for this year we're talking about.

Mr. Mansour stated let me, if I may, just bring it a little bit closer to Nevada and how it affects Nevada. Nevada has a plan to purchase about 2,000 megawatts. You saw in the previous slides that California has a plan to purchase somewhere between 7,000 and 8,000 megawatts. Nevada has a plan to purchase about 2,000 megawatts. It just so happened that the time for that purchase will coincide with the same time that California is out on the market looking to purchase as well, because the temperature tends to be across the southwest when you get a heat storm like that. So, there's a good likelihood that Nevada would also be in need of the additional power. Well, Nevada Power, as you may be aware, is a 14 percent owner of the Mojave Generating Station. So whatever gets generated at the Mojave Generating Station, they will get 14 percent from that to help alleviate shortages in southern Nevada. So, I don't think that this is, I mean we've talked to you a lot about the shortages in California, but I think it's important to keep in mind that this also has an implication to Nevada, and particularly to southern Nevada because that's where the Mojave Plant power usually goes. So, if I may Mr. Chairman, I'd like to just take a few extra minutes, you've been very gracious and very patient with us, a few extra minutes to just wrap up what we've done in the community and what we have done by way of air quality analysis to hopefully assure you that this has the support of the community and also assure you the public health will not be adversely impacted. With that and with your permission if I may just cover a few points on that.

As we discussed, the reason Mojave needs a variance is because when it starts getting up to that higher production output from the plant, it exceeds its opacity limit, or could exceed its opacity limit. And as you heard from the ISO presentation, we would use this variance only after the ISO has called a stage 2 already, has dropped all of the interruptibles or called for all interruptibles to be dropped off the system and has called the Mojave Plant for additional power to be produced.

When we first spoke to the NDEP staff to seek their guidance for how we might approach this process, they made it very clear to us that we do need to first and foremost get the community to understand what it is that we're proposing and how it might impact them and hold some public meetings within the community. They also instructed us that we need to evaluate what the air quality impact might be regarding public health and we need to be able to convince you, the Commission, that this variance is indeed needed and is not superfluous. So, we set out to accomplish these things. As far as the community - we've held two meetings: one in Bullhead City and one in Laughlin. We've had an article in the newspaper, the local newspaper, that solicited input from the public and told them about these meetings so that they can go and speak at those meetings and express their views and, indeed, one member of the public did speak at the Bullhead City meeting. Both the Laughlin Town Board as well as the Bullhead City Council voted in support and you have copies of their letters that they have sent to you in support of this proposal. We also wanted to look at the air quality implication of this variance and the best way to do that was to look back in history at the period in which the plant was not restricted by opacity. It was operating at its full load without having to drop load to meet the opacity limit. That was a period in 1993, '94 time frame. During that period our opacity limit was 40 percent 6 minute average. Today it's 30 percent 6 minute average or, therefore, in that previous period it was 33 percent higher than what it is now. And as I said we were not opacity limited at that time. So we've looked at the air quality data that was gathered during that year to see what the peak air quality was at a time when the plant was not restricted by opacity and what we found was that the peak concentration of particulates in the area for

PM10 was about half the ambient air quality standard set by EPA. So, that was a pretty good indication that we are not going to likely have serious air quality implication from operating at the higher opacity.

We also went a step further and did a computer model used by EPA as a screening tool to see if using the maximum potential to emit from the plant, if that would result in tripping the ambient air quality standards and the answer again was no, it did not. It was below those thresholds. I have a member of my staff here who's done this analysis who can address that in greater detail if you should so desire.

So, what do we expect? As I said earlier we can expect anywhere between two to three occurrences this summer. When they do occur they will probably last anywhere between two to three hours. During those three hour periods the appearance of the plume is going to be slightly darker, likely to be less than 40 percent opacity most of the time. There may be some puffs during that period, maybe two or three per hour. Those puffs can exceed 60 percent opacity. They would not last for a very extended duration. They may be less than a minute in duration. And, by in large, for a casual observer the difference between a 30 percent or a 40 percent opacity is not noticeable. Remember this is occurring during the time when the sun is high in the sky. In order to observe the distinct opacity, you'd have to have either the sunrise period or a sunset period in order to see the sun behind the plume. So, this is what we expect would happen and as Mr. Bibb pointed out and I hope I elaborated on the State of Nevada situation, that this is indeed a needed protection of public health. There will be several steps that will take place before this variance is invoked, if it is ever invoked, and that the independent system operator will open their books to the State of Nevada to ensure that these steps were taken and, indeed, the plant is not called on unless it's the last resort. With that, I'd respectfully request the Commission to approve our request for a variance and we would operate the plant in accordance with that variance.

AC Coyner called for further questions from the Commission.

Commissioner Gifford stated I noticed that the variance request has a 20 hour limitation on it and assuming you need the power over summer, assuming it's a little worse than what you've anticipated, is 20 hours enough? From what I understand from the discussion I've heard that if you're talking say an average of three hours each time something occurs, you're only talking less than seven occurrences and you've used up your time. Is 20 hours a logical number to have in there? And again, I'm assuming the worst. You're just using your 5 or 10 percent probability figures and so maybe using it three times which leaves you some insurance, but on the other hand, a real worse-case scenario, is 20 hours a sufficient number?

Mr. Mansour answered we believe it will be. The reason the 20 hours is in there is because it's in response to a comment made by the public in Bullhead City. They were in agreement with the need for some variance to protect the public health, but they didn't want it to be abused. So, as a way of assuring them that it will not be abused, we have agreed to a limitation of 20 hours. Based on what we know today, it appears as though that 20 hours will be sufficient to carry this through this situation. This is

an attempt on our part to be responsive to the public and assure them that this will not be an abused privilege.

Mr. Bibb stated and also let me add that the way that when we enter into stage 1 and go into stage 2, a stage 1, usually are called somewhere around noon time and when we have gotten to the stage 2's, they've been called somewhere around 1,400, 2:00 p.m. time. So, using again, that two to three hours over peak that as the reserves start falling and we get a much better forecast and look at where the loads are heading, that's when we would, and we see that we're going to go across peak and we're going to start losing or heading toward that 1-1/2 percent, or falling toward 1-1/2 is when we would invoke this variance. So, I agree, 20 hours would probably be a safe number that I think we can live with. We live in that community and we're not going to abuse their gracious willingness to support us.

AC Coyner stated let me attempt to tighten the terms here a little bit so we understand them. We're not looking at an event limit. So, in other words, you could have ultimately, since we're looking at six minute monitoring periods and we're adding those up essentially, that totals up to a limit of 20 hours. Whereas there could be 10 events or 15 events or even 20 events, depending on how short the period is. But the cap, the limit we're looking at, is 20 hours of exceedence during the four month period.

Mr. Mansour stated actually, we're asking for a lot less than that. We're asking that the number of hours under which the variance is in operation would be limited to 20 hours. Within that time it will not consistently be over the 30 percent opacity limit that we have.

AC Coyner asked based on six minute monitoring correct?

Mr. Mansour answered yes.

AC Coyner stated so that everyone is clear, there's not an event linkage here. It's just total hours.

Mr. Mansour stated correct.

AC Coyner stated the other thing is you've indicated you would report the emission, the monitoring to the NDEP within 15 days following the episode.

Mr. Mansour stated that is correct.

AC Coyner stated that you will do. We have three letters of consideration to look at and we'll turn to those in a minute. But I note that in one they asked for some sort of notification that this has been exceeded. Will that occur as part of this report to the NDEP? How do you plan on satisfying that request that they, essentially I think, they would write the report on a monthly basis as to the use of this variance. Is there something in mind you have with regards to how you would report the use of a variance?

Mr. Mansour explained we would be reporting to the NDEP as the regulating agency. And I suppose you

will notify any and all those who would wish to know what the data looks like? Am I correct on that assumption?

AC Coyner stated I could see the public wanting to call and saying, "Have they used the variance in the last 30 days?" And essentially I guess they would call NDEP to get that answer.

Mr. Mansour stated just as they would right now on any other emission data pertaining to the operation of the plant.

AC Coyner asked does the NDEP have a comment or response to the request?

Jolaine Johnson greeted the Chairman and members of the Commission and introduced herself as the Deputy Administrator for the Division of Environmental Protection. She introduced Don Del Porto as being the supervisor of the Air Quality Permitting Program. She stated we have reviewed the variance that has been requested by Southern Cal Edison for increasing opacity allowances in these extreme emergency conditions and quite generally we agree, or propose that the Commission accept this variance to protect public health and safety in the event of these extreme hot events. We have worked with Southern Cal Edison to set the terms of the variance and the language that you have in your letter is in agreement with us. Mr. Bibb, with ISO, has indicated that the ISO will not call for this power increase unless all other options have been exhausted for power generation and all of those interruptible customers are already down. So, we think that we're at an extreme edge when this event occurs and it would be appropriate and not harmful to the environment to allow this kind of operation in those extreme emergency conditions. Mr. Del Porto is going to give you a brief overview of our review of the environmental assessment that Southern Cal Edison submitted with this proposal.

Don Del Porto stated we reviewed the environmental evaluation that Southern Cal Edison submitted to us. We went through it pretty thorough and then independently ran our own environmental evaluation using the same model. Using some standard meteorological data to enter into the model and once the model was done we compared the results with theirs and it does confirm that the analysis will meet all the Nevada and the national ambient air quality standards.

Ms. Johnson stated the only thing that I would like to clarify is the discussion that you had just a moment ago with Mr. Mansour and that is in regards to the 20 hour limit. The letter indicates that the 20 hour limit applies to opacity exceedences. If the intent is for the 20 hours to apply to the time frame when this emergency situation has been called, I think that needs to be clarified. If you'll look at the last page of the variance request letter it says, "The total hours of opacity exceedence as the result of the variance shall not exceed 20 hours." That allows for a lot more time for these emergency situations to occur because the opacity is not going to continuously exceed the 30 percent that is now established for this source. But Mr. Mansour indicated that all they wanted at this point was 20 hours of alert or emergency condition where they can operate at the higher load at the risk of exceeding opacity for parts of that time.

Mr. Mansour stated we would accept a tighter limitation (inaudible).

AC Coyner stated well, this runs to my question again. Are we looking at 6 minute increments that total 20 hours over the 4 months because that's when you measure on. Not that we've declared an emergency for 3 hours, so we've used up 3 hours of our 20 hours. I would assume you'd want to tie it to the monitoring rather than the period of time you're calling an emergency. But, you guys decide which one you want.

Ms. Johnson stated I believe Mr. Mansour is agreeing that we don't want 20 hours of opacity exceedence. What we want is 20 hours of allowing them to operate at this higher load at the risk of opacity exceedence sometimes during that 20 hours.

Mr. Mansour stated that is correct.

Ms. Johnson agreed.

Mr. Mansour stated and the language, as you interpret it, it is saying 20 hours of opacity exceedence. So that needs to be revised to reflect 20 hours operating under a variance condition.

AC Coyner called for comments from the public. He called upon Bob Hall.

Bob Hall asked am I the only non-paid person here? First of all, the Mojave Power Plant is not a model of clean energy. The last article I remember reading about the Mojave Power Plant was in The Wall Street Journal. And I've read a lot of other information about the Southern California Edison Company and their policies don't appear to be green. Opacity means air pollution. What does that mean? Well, it means what happened to me the other day. I went down to buy, put an order in for a new car, of course I'm not working but, anyway I'm buying a new car. And the salesman was telling me about his grandson, 14 year old grandson dying of asthma. One day he couldn't get his breath and he died. I've driven up I-15 to the Reid Plant which is a similar situation. I went over the hill and my eyes started watering and I had trouble breathing. So this is what it really means when we're talking about air pollution.

What we're talking about here is a management and a planning failure. This is a disaster. This whole Mojave situation is an absolute disaster. And depending upon which way the winds blow, that pollution comes right into this non-attainment area in the valley. In this non-attainment area there is no valid SIP. No 1990 amendment SIP. There are no budgets and there is no law that permits the State or the county to go ahead with anything that we're talking about here today because they're dead in the water and they've been dead in the water legally over the issue that they just simply refuse to put in a 1990 amendment SIP and then have emissions budgets and then have general conformity, which they don't have. So, we're not blind to the power outage argument. But because of their planning and management failures, they're coming here and putting this load on you and if there is a power outage they will go back and say, "We came before the Nevada Commission and they turned us down." My suggestion before I go any further is that we hold another meeting and really do our homework ahead of time and start inviting suppliers of power into this jurisdiction that can produce cleaner power and, frankly, I hope we get rid of Southern California Edison permanently. And it has to do with their long-standing management practices.

Now the new facilities are always way off into the future. We've got to deal with the pollution now. And we're in serious non-attainment now and we're under the gun; we're going to lose everything here in the next few months if it doesn't work out just exactly right. They say it will have no significant impact; that they involved the public. Well, they didn't involve anybody that we know in the non-attainment area. And it's true that a lot of their air pollution goes into the Grand Canyon, but not all the time. It depends on which way the wind blows. And a lot of the time around here the wind blows from the south. So, I don't know what he's talking about and I'd like to see these documents and if they haven't heard of us, we're doing a better job, we've got a new Web site on the line and we're trying to get the information out that we are a true coalition. The other day when an issue came up we had a two hour meeting. Every environmental group in the valley including Sierra Club attended and we reached a consensus agreement and we went out and presented that to the Senate Bill 432 Committee in this case. So we do act as a coalition. And a lot of us, a lot of our people have to work for a living. They can't be here today. So, since I'm retired I come down and do some of these things. But the public has not been informed in this valley. And I knew nothing about it. I read the notices in the paper every day. I do everything I can to get the information and I don't know who they're talking to, but they're not talking to us. There's no medical information here. We don't know what these little puffs in opacity are going to do to human beings. But probably it's not very good and we know that what's being put out of that plant is noxious as it can be. I've driven by it many times. I've had to breath it on occasion myself and it is not something that you want to extend beyond any limits that have been set for it. Now they talk about the NAC's. How can they talk about the NAC's in a non-attainment area that doesn't have an emissions budget? I'm sorry but it's just simply not true. It may be around the plant. But that plant and that stack is so high that it's spreading the air pollution throughout the southwest. We all know that. My feeling is that if they have to do this they should have to pay \$10,000 a day. I think they ought to pay \$10,000 an hour and that isn't enough because it's chump change to them and it won't cause them to do anything. There's no incentive here. They come up, it costs them a plane ticket and a few hours of their time and I suspect that this is, I haven't lived here except for 4-1/2 years now, but I suspect this has been going on for 30 years, ever since the Clean Air Act was first invoked. There's a complete failure of thinking and planning around here and we've got to change our ways of dealing with these problems if we're ever going to fend off the fact of a federal implementation plan or a complete cutoff of all federal funds in this valley which would really put a crimp in things around here. But thank you for allowing me to speak and I shall give the gentleman my card to make sure he knows next time who we are and how to reach us.

AC Coyner asked if there were any other members of the public wishing to speak to this variance request. Seeing none he closed the public comment and asked for a motion from the Commission.

**Commissioner Gifford moved that the variance be granted.**

**Comm. Trenoweth seconded the motion.**

**AC Coyner stated the motion for approval from Commissioner Gifford and a second from Commissioner Trenoweth with the amendment as noted. Is there amendments or was there just an understanding of the variance?**

**Commissioner Gifford answered just an understanding of the variance.**

**The motion carried unanimously.**

AC Coyner called for a lunch break at 12:20 p.m. and reconvened the meeting at 1:40 p.m. with **Agenda Item II.C. Petition 2000-09.**

**(Petition 2000-09 (LCB R-090-00)** is a permanent amendment to NAC 519A.010 to 519A.415, the mining regulation and reclamation rules. The amendments include an added definition for "process fluid stabilization," the establishment of a readiness fund for emergency fluid management with fees in the year 2001, 2002 and 2003. Amended is NAC 519A.345 by allowing surety's to be used for process fluid stabilization. NAC 519A.360 is amended to limit only the cost of reclamation activities in the calculations of the aforementioned fees.)

Mr. Biaggi greeted the Chairman and the Commission members and introduced himself as being the Administrator of the Division of Environmental Protection. He introduced David Gaskin as being the chief of the Bureau of Mining Regulation and Reclamation and Connie Davis as being the supervisor of the Reclamation Branch. He stated as you've just read, Petition 2000-09 deals with two issues: process fluid stabilization and the emergency fluid management. What we will be presenting to you today is only the component of process fluid stabilization. We have been in discussions over the last month or so with the Legislative Counsel Bureau regarding the emergency fluid management fund and we would like to continue to have discussions with them. Consequently, you will not hear that portion of the petition today. So, I will turn it over to Dave Gaskin and to Connie who will talk about the petition part dealing with process fluid stabilization.

Dave Gaskin greeted the Chairman and members of the Commission. He stated we are here to present Petition 2000-09, which involves the mining reclamation regulations. The past few years we've recognized the need to revise our thinking on the number of issues regarding mining reclamation in the light of bankruptcies, abandonments, declining metals prices. We've been working closely with industry and other groups to help address these areas that would require a refinement of how we regulate mining in the State.

This one here today I think you have in your packet which I'm referring to the LCB Proposed Permanent Regulation and what it does in Section 1 you can see that it just adds a definition of processed fluid stabilization. We've recognized that in the closure of mine facilities trying to manage the closure of such

facilities and getting into the reclamation, the process fluids are one of the biggest concerns that we run into. So what we'd like to do is have the ability to require a surety for the activities of process fluid stabilization. That's often one of the biggest costs that's involved with mine closure and reclamation. So we've added a definition of process fluid stabilization, which means binding, containing or otherwise treating contaminants in a fluid, including, without limitation, meteoric waters, that have intentionally or unintentionally been introduced into a heap leaching facility or tailings facility to prevent the contaminants from degrading the waters in this state through naturally occurring environmental conditions which may be reasonably expected at the mine site.

Section 2 just makes sure that definition is included in the definitions under 519A.

Section 3 lists the various activities that are required for reclamation and on page 2 it inserts process fluid stabilization as activities that are required under impoundments for tailings and under heaps from leaching. Those are the main process components that are involved in this activity.

Section 4 is in regard to NAC 519A.360 which covers what is and is not included in reclamation, specifically Item No. 4 on page 4 says what needs to be included in a plan for reclamation. And we just have emphasized that all activities required under these regulations must be considered in the cost of executing a plan for reclamation and specifically putting in process fluid stabilization as one of those activities.

And then finally on the last page, that's Section 5, says what is not included in the cost of executing a plan for reclamation. It just says anything not required by the 519A regulations or statutes is not required to be covered by a surety.

We did have public workshops back in May. We had them in Reno, Las Vegas, Winnemucca, and Elko. We received a set of written comments from Great Basin Mine Watch. The majority of those did cover the other item to which Mr. Biaggi eluded which was the readiness fund, which we're not going to present before you today. The comments that did apply to this were really non-consequential. They recommended we revise NAC 445 at the same time. We have not considered that at this time. And, finally, I'd like to read into the record a letter from the Nevada Mining Association in support of this proposed regulation revision. It's a letter dated March 23, 2000 to Allen Biaggi from Russ Fields, President of NMA.

“Dear Allen: I met with members of your staff, Jolaine Johnson and Dave Gaskin, Monday, March 20th to deliver the position of the Nevada Mining Association's Board of Directors on the two issues referenced above. Enclosed is a copy of the materials I provided them. You have previously seen these; nothing new here. The positions and language discussed with your staff and presented in the enclosed materials have the full support of the Board of the Nevada Mining Association. The Board understands NDEP continues to work on the corporate guarantee concepts and we have no collective position on corporate guarantees other than we believe NDEP currently has significant authority

to strengthen its administration of the use or non-use of corporate guarantee as a bonding mechanism. Jolaine explained that NDEP would review the positions I presented then proceed to LCB for drafting of regulatory language. Of course, if your staff offers substantive changes I would appreciate very much your letting me know. We agreed that process fluid management bonding and the interim fluids management fund regulation should move forward immediately, leaving corporate guarantee language until later if NDEP is not ready to move that issue forward. The Boards believe strongly that the positions we have provided will serve to greatly strengthen the Nevada mining regulatory program. We look forward to working with you and your staff to bring these matters to a rapid conclusion. Sincerely, Russ Fields.”

I’m ready to answer any questions you may have on this matter.

Commissioner Gifford stated it just seemed to me that in terms of consistency on wording and what I had a little bit of a problem with in reading through this, when I get back to section 4, item 4 on page 4, it says, “In determining the cost of executing the plan for reclamation, the operator shall consider all activities in the plan for reclamation that are required by NAC . . .” I can’t find anything in here that is actually required, that it’s all up to the discretion of the Division. For example on page 1, right under section 3, item 519A.345 it says, “The division may, if appropriate. . . “ and then it continues from there. What I was wondering is if on page 4, item 4, if the words “may be” should be inserted there. In other words, the sentence would read, “the operator shall consider all activities in the plan for reclamation that may be required by NAC 519A.010” etc. Also on page 5, the third sentence where it says beginning in the middle of the sentence but in sentence number 3, “. . . any activity not included in the plan of reclamation or that may not be required by NAC . . .” because to me if it’s required it says “will” or “shall” and I can’t find those words anywhere. Everything I find is up to the discretion of the Division to dictate that. I was wondering in terms of the consistency of wording if those modifications would be appropriate.

Mr. Gaskin stated yes sir. I think if you look on the first page, the NAC 519A.345 is a list of activities that may not necessarily apply to all operations. The flexibility is there to account for different types of operations that may have different types of disturbances that require reclamation. We do require that whatever they disturb they reclaim, but they may not have all of these activities at every site so they didn’t what to say you have to do every single thing on this list because they may not be applicable. So, I think that’s where the flexibility is intended to allow for the different types of operations.

Commissioner Gifford stated I realize that, but I was just wondering in terms of just consistency in wording, if it wasn’t more appropriate to put it in essentially the same verbiage as what you see on page 1, 519A.345. In other words, the word “may” in there to me is very strong and, in fact, there are a couple of hedge words there, “may” and “if appropriate.” And so it’s double-duty hedging there as far as I’m concerned. But, nevertheless, if that’s in there up front, then to me it would just seem a little more consistent to have it also in the wording as you move back into your document that it doesn’t

change the intent of anything that you've said, it just makes it consistent with what you see on line 14 there on page 1. But that was just a suggestion..

Mr. Gaskin stated okay. Thank you sir.

Commissioner Johnson stated I think there's a fundamental conflict in the sense this leaves a door open that if you require one of these actions for roads or drill pad reclamation because it's a "may" and "appropriate" under the NAC, that you can't demand that it's covered under the bonding because it's not required under NAC in the language. There's a conflict. It isn't simply a matter of (inaudible). If you go back to page 4, consider all activities that are required by NAC, you need to change the language that all activities required by the Division to comply with, perhaps. Not required by NAC because the reclamation of the drill pad is left to your discretion. Then you can't come back and say you have to bond for it if it's only something that's required under NAC.

Mr. Gaskin stated this is only a selected regulation here that is just a list of typical activities that are included under reclamation.

Commissioner Johnson asked but is there another one somewhere that says "activities?" This paragraph appears to me to be your authority to consider the cost in asking for a reclamation bond.

Mr. Gaskin answered well I think the rest of the regulations and the statutes say that if it's disturbed it must be reclaimed and that's where the real authority and the required comes in. This is just a list of typical activities that may or may not apply and we want to make sure that process fluid stabilization, they have a tailings impoundment, if they have a heap leach system, those will be reclamation activities that would be included under the 519A regulations.

Commissioner Johnson stated well okay. I guess my choice of roads and drill pad distribution, but okay, what about the pond that you just said, the reclamation to that is now discretionary except that NAC, it isn't required anywhere, it doesn't, I mean, let's start, you have a list of things that are discretionary and part of that is process fluid stabilization . . .

Mr. Gaskin explained they're not discretionary, only if they apply to that particular project. If you have that disturbance, you have to reclaim it. I agree that's not in this particular NAC right here; but that's not really the intent. This lists the different activities that, if appropriate, that means if they are a part of your project, that's what it says the Division may require an operator to reclaim because those are appropriate. So, we're not using our discretion, we're just having flexibility that not all operations have the same types of disturbance. But that's not new language, I mean that's the way it has been.

Commissioner Johnson stated I suppose. I'll have to review this and think about it some more, but on page 2 you subtract stabilization, which must have some meaning or some purpose in existing language and you substitute that for process fluid stabilization and there is not in that section a stabilization which may be slope stabilization or whatever it is.

Mr. Gaskin answered physical stability, right.

Commissioner Johnson stated physical stability, but you no longer have it now in that section because you've replaced it by process fluid stabilization. Shouldn't you have simply added process fluid stabilization?

Mr. Gaskin answered it has regrading to enhance structural stability, promote runoff, reduce infiltration and control erosion. We felt those covered those aspects of physical stability.

Commissioner Johnson stated well, okay. So in the original language, existing language . . .

Mr. Gaskin stated it was kind of redundant.

Commissioner Johnson asked there's duplication already?

Mr. Gaskin answered right. Yes sir.

Commissioner Johnson stated let me take a break and reconsider what I think the language on this "required" and "not required" looks like.

AC Coyner called for further questions from the Commission. He then asked Ms. Davis if she had anything to add. She replied that she felt that Mr. Gaskin had covered it.

Commissioner Johnson stated in the definition of process fluid stabilization I'd like to hear a little more about from degrading the waters in the State through naturally occurring environmental conditions. I'd just elaborate on this naturally occurring environmental conditions. Are we in a really artificial or an induced condition that we're looking at here?

Mr. Gaskin explained what we do in mine closure, especially in heap and tailing impoundment closure is look at the potential for a component in its final closure configuration to degrade waters of the State under environmental conditions which you may reasonably expect at that site. So then we're going to perform modeling and analysis and demonstration they won't degrade waters of the State based on certain key components such as meteoric input to a heap, predicted infiltration and outflow and then use that in a fate and transport-type analysis to determine whether waters of the State have the potential to be degraded.

AC Coyner called for further questions from the Commission and acknowledged that they would still come back to revisit the language issue. He then called for questions from the public. He called upon Bob Hall.

Bob Hall stated you're touching on something that I've had discussions with staff on that in reading regulations for four years it's become apparent to me that you got a major administrative problem. The problem is has been brought up by Mr. Gifford and Mr. Johnson that regulations can be vague and

ambiguous. They've got to be clear-cut for two reasons: legally, some day you'll get tripped up in court on them on the other side of the coin, you're leaving the door wide open for lobbying your staff more than you should. It should be if you get a notice of violation, they've got the proof on you, it's firm. There shouldn't be any wiggle room there. The wiggle room is whether or not you get the violation. Now, one way you can stay out of this kind of trouble is to subscribe to everyone else's regulations that is in this business. Basically, the mining business, or whatever. And you should have the regulations from other states and a good lawyer who has skill in drafting laws and regulations because good laws are never vague and ambiguous. And that permeates everything that we're doing. We've seen some regulations, just on the Open Meeting Law and the Administrative Procedures Act. Nobody in their right mind would have drafted those two things and have them come together on this issue when they're actually opposite from each other. It's nuts. One of them says three days, one says 30 days, one has this agenda, one has that agenda or form and the Attorney General, I'm down in District Court and she's lost two motions for summary judgement on the action I brought against the State Board of Health because they don't have a leg to stand on and that's what you're talking about here. I would as a practice make sure the most conservative attorney you can find in drafting regulations has reviewed these things and signed them. You might save yourself a lot of trouble.

AC Coyner called for further questions from the public.

Paul Scheidig greeted the Chairman and the members of the Commission and introduced himself as being Director of Regulatory and Environmental Affairs for the Nevada Mining Association. He stated I'd just like to footnote the letter that was read into the record in identifying our support of these regulations. We think they're necessary and very meaningful as written and we would urge you to adopt them.

Commissioner Johnson asked can we expect a legislative request or a Bill Draft Request to address the issue of the funding of this interim act or the proposal that seemingly we don't have the authority of doing that?

Mr. Scheidig answered well that proposal Mr. Commissioner is not on the table and I'm not addressing that at this time. To be very honest with you I'll defer to the administrator, Mr. Biaggi.

Mr. Biaggi stated Mr. Johnson we don't believe that a legislative fix is necessary. We believe that the authority is there. It is just fine-tuning the wording to satisfy the Legislative Counsel Bureau. The Attorney General has already agreed that we have the authority to do it. It's just where do we put it and how do we word smith it to make it satisfactory for LCB.

Commissioner Johnson stated oh, I was looking forward to seeing it actually.

AC Coyner called upon Rich Haddock with Barrick Goldstrike.

Rich Haddock introduced himself as senior counsel of U.S. operations for Barrick Gold Corporation. He stated I'm here today just to state our support for this regulation. It's a regulation that's gone through a

good deal of word smithing and a good deal of careful thought. We think it's relatively clear. It's not a perfect world we live in. When these regulations were passed in 1989 we feel like the industry and the environmental community, the State and everybody did their best to cover all the contingencies. Through time it came clear that process fluid stabilization was one area of what we considered to be reclamation, that simply wasn't bonded. And this regulation is designed to fix that and to make sure sureties are in place for all operators who have process fluids on their property.

One comment I would like to make specifically on the language, there's been a good deal of discussion about this today is the language in subsection 5. Back when, you need to kind of remember that at the same time there were two sets of laws going into effect there was the reclamation law and there was the Water Pollution Control Act as it related to mining facilities. On the one hand the Water Pollution Control Act kind of set the substantive standards and established the notion of degradation and what would be allowed, what would not be allowed, what would be considered degradation of the waters of the State. On the other hand, reclamation was more of a kind of this is what you do to get the property reclaimed and it does not set the substantive standard so much as it does kind of these are the procedures, these are the things you need to look at for a given site and these are the things that you need to do. So, when we're looking at what is degradation of waters of the State and how that's defined, then we have to look over at the Water Pollution Control Act and not at these regulations. So, these two regulatory and statutory schemes are designed to be interwoven to some extent, but they are separate notions. And so I just wanted to make that so it was clear that when we're talking about this definition of process fluid stabilization we're not meaning to be redundant or to set new water pollution control standards. That's done in Chapter 445A of NRS.

The only other comment I'd like to make is I want to agree with Mr. Biaggi on the question of the other part of the petition that was previously going to be considered today and it's on the interim management fund. I was prepared today to go through the authorities that I think allow NDEP to collect that fund. I think it's good government when certainly the LCB and others who are required to look at fees take a hard look at whether those fees are appropriate and try to protect the regulated community and the public from unnecessary fees. But in this case we don't want to be protected. We want to pay that fee. We want to establish that interim fluid management fund as soon as possible. So, I hope we're back here speaking in support of that soon and those are my comments Mr. Chairman.

AC Coyner called for questions from the Commission. There were none. He stated we want to revisit the language of those two sections and talk about the more restrictive versus more general nature of that wording. We've got basically two sections there that we've got questions about and that's in section 4 where we're looking at, "that are required" which I would agree is more in tune with the previous language of "must be considered" and we're asking whether that should be looked at more as a "may be" "that may be required." And then also, similarly, in section 5 "included in the plan for reclamation" or "that may be not required." And I guess it is a question of whether there is a double, if appropriate

as you say, it's couched within other language of whether it's appropriate or not. So, have you got further thoughts Commissioner Johnson?

Commissioner Gifford stated I wasn't arguing for any change of intent. All my argument was was just consistency.

Commissioner Johnson stated that's my thought and I have in existing language on page 1, section 3 "the Division", and I have a proposed, "shall if applicable" and this gets away from "may if appropriate." There's a very sharp difference in my mind of those two terms. You said that there was other language in 519 that requires that any action that they do be reclaimed, which says then that if they've done it you will require it which is "shall if applicable" and "applicable" meaning if they've performed that act on the site, rather than "may if appropriate." "Appropriate" to me is more total discretion of whether you think that they should or not, not whether they did it and will do it. I don't know the comments and whether we even should deal with making this kind of change without it being noticed or this doesn't appear to be a substantive change because it's not a change in what you already do. But I feel much more comfortable and then it negates the problems later of requiring or not. Just, as I said, I don't think I have any problem with what you've said you're doing. But the language appears to have a conflict between a required action and then these "may if appropriate" actions.

Mr. Gaskin stated I believe I understand your point and I agree with that. I do think, however, when we really cite our basis for requiring reclamation we don't use that. We use the more basic definition of reclamation, which would be 519A.075, which is very clear on what must be done for reclamation in a general way, not a list of specific activities or 519A.245, "Circumstances under which reclamation is required" which describes things such as if the land was disturbed by the current operator, then they're required to reclaim it. So, I think when we're citing our authority we don't cite the list of possible activities, we cite the more basic regulations.

Commissioner Johnson stated it's kind of moot because it is covered elsewhere in 519.

AC Coyner commented I guess I would see just an isolation again. That's the problem. We're looking at this in an isolated situation, one section of it. But, the "may if appropriate" is appropriate, if I can say that, for roads and drill pads for instance because you may figure that natural reclamation has proceeded to the point where it wouldn't be appropriate to go in and do the applicable reclamation perhaps. Or perhaps the road is more useful as an emergency road for fire access and things like that.

Mr. Gaskin stated post-mining land use is considered in that decision as well. So that's a good point. There may be other factors.

AC Coyner stated those things change over time from when the reclamation plan was first put into effect from versus as you're looking at it for reclamation purposes.

Commissioner Johnson stated now you've really hit my sore spot. I just heard that it was required if it's disturbed and now you tell me it's really if it's appropriate. And that's exactly what I didn't want to see. And you've made my point and I guess I'll be entrenched upon this point.

Mr. Gaskin stated under 519A.245 it does list different time frames wherein the same type of disturbance may or may not require reclamation. That's not a discretionary decision on the part of the Division. That's included in the regulations. There are other factors that may go into that based on a certain criteria that may or may not apply. But it's not discretion. It's different options that are included in the regulations.

Commissioner Johnson asked then why do we need this section at all?

Mr. Gaskin asked the 345 section?

Commissioner Johnson answered that's correct.

Mr. Gaskin explained that's to inform operators as to what type of activities we will be considering because that's what they need to include in their plan for reclamation is to cover these items. These are things that should be included if they apply to that particular operation. It's just a descriptive list.

Commissioner Johnson stated I fail to see if you have the authority to require it and they're required in another section, required, that the optional listing should be here.

Mr. Gaskin stated it's not an optional listing. It's a listing of possible components and things that need to be reclaimed that may or may not be part of a specific project. But if they do, then they should be considered.

Commissioner Johnson stated then perhaps we should say "shall be reclaimed."

Mr. Gaskin stated okay. But as you said that's the way it's been since these regulations were passed and that's the way it is implemented. If that's a problem maybe we can consider that. It hasn't caused a problem up to this point. I think we have the authority to require the reclamation that is part of these regulations and that's how it's been done. No one's argued that.

Mr. Biaggi stated Mr. Johnson I think I see where you're coming from, but I would feel very uncomfortable in modifying the existing language. I would want to take this back, consider it within the agency, run it by our Attorney General's office, run it by LCB, but most importantly run it by industry as well to make sure that works for them. So, I guess what I would suggest today that you consider only the language that is up for modification at this time. We'll take your comments under consideration and advisement and bring them back to you as appropriate at some future meeting.

Commissioner Johnson stated I will accept that. I think there's a reason to include the definition and my concern is this flow, not necessarily with what you're presently doing, but as always you need to put whatever proposed change into the total picture, and I haven't done that, obviously, and I need to do that and I would agree with that.

AC Coyner called for further comments from the Commission and the public. Since there were none he declared the public comment period closed and called for a motion.

**Comm. Crawforth made a motion for approval of Petition 2000-09 as written.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**  
**A. Nevada Power Company; Notice of Alleged Violations #1394 to 1404**

Eric Taxer greeted the Chairman and the members of the Commission and introduced himself as the supervisor of the Enforcement and Compliance Branch with the Bureau of Air Quality. He stated the first item I'm discussing is the 11 NOAVs that were issued to Nevada Power Company. This item was presented to the Commission at its April meeting. At that time the Commission requested that we renegotiate the supplemental environmental project that was presented for ratification. And I'm here to present that revised settlement agreement. What the revised agreement is is participation by Nevada Power Company in the construction of the Clark County Nature Center and Wetlands Park in an effort to restore the wetlands area at the Las Vegas Wash. The construction is planned to occur in the fourth quarter of this year. Eligible costs that would be considered to mitigate the penalty amount would include construction materials billable at invoice cost, construction equipment billable at the Clark County Parks and Recreation rates, a Nevada Power Company employee construction labor costs at \$14 per hour rate, and Nevada Power Company employee engineering design costs at a \$28 per hour rate. The Clark County Parks and Recreation Department will provide the Division with certification that all funds have been appropriately spent for the project and the total penalty amount remains the same - \$9,190. At this time, the Division recommends ratification of this proposed settlement agreement.

AC Coyner called for questions from the Commission.

Comm. Crawforth complimented Mr. Taxer. He stated this is much better than what we had last time from my perspective and the money is being spent in the right place. As I recall the supplemental environmental project that was negotiated earlier was for Nevada Power to contract outside for some auditing?

Mr. Taxer answered correct.

Comm. Crawford asked I assume we've taken that out of this whole process, but do you know if they will be conducting that auditing?

Mr. Taxer answered they will be conducting the initial audit to identify what the problems were, where the problems are located, and then to implement the recommendations of that initial audit so that the supplemental environmental project that was previously offered up also required a second follow-up audit at the end of the calendar year. We didn't see a reason to require that again as long as the initial recommendations were implemented and that Nevada Power Company identify to us how they're implementing those recommendations from the initial audit.

AC Coyner called for other questions for Mr. Taxer. He called upon Bob Hall.

Bob Hall stated this one is the real reason I came here today, but while I was here I thought I'd get a triple-header. I'm just going to speak frankly about this as I've been known to do, if you don't mind. This is a scofflaw operation. I mean, it's a long history of complete disregard for the public health and welfare and public safety. A long history of noncompliance and the penalties that they are proposing here are absurd. They're chump change. If I was Reid Gardner, if I owned Nevada Power, I would never comply with the laws. For what? I mean I would throw them \$10,000 a day and make it stick and try to raise the \$10,000. That's the only way you're ever going to get anything changed. That place up there is a mess. And depending on which way the wind blows we either pollute our neighbors in Utah, or the Grand Canyon, or we pollute us down here in the Las Vegas valley non-attainment area. So we have an interest and a concern about this. And as a matter of fact, I know from my work with the Clark County Health District that Nevada Power is one of a long list of companies, sources of air pollution here, I'm talking about the local side, where we've seen situations where they haven't complied with the law for years. In fact they admitted they didn't know what to pay or how much to pay and everything else, I mean it's really a mess. There's no connection between the penalty and the remedy or the problem. In other words, they're going to go out and do good in the community, but the good that they should do is clean up that plant. That's what we want as a community. We will take any good contribution for the community, don't get me wrong, but in this case we shouldn't tie it to a penalty. I'd like to see a penalty that I know is going to clean up the air and not what we've got.

To me this is a complete enforcement breakdown. It's just so astonishing as I read it. This is the second largest, according to their own blurb here, source of air pollution in the State and I have personal knowledge of the fact that it's terrible. All you got to do is drive up the highway. And I don't know what else to say. This is a stunning situation. To a person that comes in from other jurisdictions where they do things a little differently and you try to find out why are we having all this air pollution? There's the answer. Things have really got to change around here if you're going to meet attainment. Now let me get down to nuts and bolts. We have a plan and there's a lot of people involved in executing this plan and we have come to the conclusion that this State just doesn't care. I'm not talking about you people individually because a lot of you are new or you haven't been on the Board that long or anything else. But in dealing with the Clark County Commission and the Clark County Board of Health and so forth, we understand what the problem is. The problem is a problem of attitude. Allen, you've been

trained well. You worked under some good people over the years, but there is a possibility that you're a little too close to industry. And everybody is. The public, these meetings aren't held at night so the people who work can't come to these meetings. It's really a sad situation. You're going to lose all federal funds in this State very, very shortly and it's because of one issue: conformity. You can't meet conformity under anything that these people are proposing down here and the State, to the extent that it controls some air pollution here, is part of the problem.

I'll give you an example which applies here. I have a case in U.S. District Court against the BLM and it's sort of the thing I heard at the break. Everything that BLM does, "Oh, it's not much pollution, it's not significant." You're "not significant" 10,000 times, but if you add it all up, it would be very significant. And that's the problem. Conformity says that you're supposed to add up all the air pollution beans in the valley, do it accurately, credibly, with some dignity and some honor, don't lie like hell about it, and when you see that the number is huge, some organization, State, local, or whatever and the State has the authority, has to put it into a spreadsheet and if the numbers exceed the limits in the spreadsheet you have to say, "Excuse me, we've got too many projects going on here at one time. We have to do something about this." It's never happened in this State. And that's what's wrong. Everybody thinks the SIP is the big deal. SIP isn't the big deal. The SIP's going to fail because there's no rule in there that says we're going to have a moratorium on how many acres we can bulldoze or how many dirty power plants we can have or whatever and we're going to slow this process down a little bit because we're exceeding our guidelines. It doesn't happen here, nobody wants it. But what we can do and what we're doing is we've got three cases in the 9th Circuit Court of Appeals, we've got two in the U.S. District Court and I've got over 30 administrative actions going and any one of them could stop the funding here in the valley. Do we want to stop the funding in the valley? We're not crazy. But we can't get any cooperation. That's the problem. Down here they just don't care. So, we don't have any other choice. The only weapon we've got left is the federal law and go down and apply to the federal agencies. It's sort of like the old donkey with the baseball bat. We've tried the baseball bat. We've tried the two-by-four, now we're using a telephone pole. And that's where you're headed as a State. This is one little piece to the puzzle, but if somebody can't see what's wrong here, then we're just going to have to fight it out in the federal courts.

We formed an organization called the Nevada Public Law Advocates, Inc. We have a nationwide search for attorneys. And we're going to bring in as many attorneys as it takes here. I've been carrying these cases myself, but there's a limit to how much one person can do. And we're approaching the foundations around the country and locally to get funding for it, but we already have enough funding to get moving. Again, you'll find that I'm the world's easiest guy to get along with. We're not adversaries, but something has to change here. And it's basically the county, but it's not all the county. I've asked Governor Guinn to take this power back from the county. If he won't do it, then we've got to get the federal implementation plan and I can assure you that all of these little pieces to the puzzle that we've been talking about, they do add up and they are a part of the problem and it's unlawful what you're doing for this reason: you cannot authorize pollution in an area with no budgets and no conformity. It's just that simple. I know this is outside the non-attainment area, but it's still, it does come down to the valley, there are laws that if we can't apply it to the non-attainment area, we can apply it to the Grand Canyon. There are laws that prevent that from happening and most of the time I'll have to agree that the wind does blow

that way.

So, again, we're here to help you, we're here to cooperate. What's wrong, one more thing, is a lot of people don't want to hear from me or the people I work with. That's fine. It's a mistake. Even Mackie Ellie the greatest politician in the world said, "Bring the troublemakers inside where you can keep an eye on them." And every once in a while you should hear from people like us and I'll donate what time I have to public service and make myself available as much as possible and you'll find that behind me there's a lot of very, very skilled people. I'll give you an example, and I want to make this point because I want to make it clear that I'm not alone in this thing. I just filed a document at lunch time with the Clark County Health District. It's about 40 - 50 pages and all the detail and engineering work was done by people around the valley that are just fed up to their ears that know what's going on around here. All I did was put it together and file it. So, I thank you for your time. That makes all I have the only reason I came down here. I'm finished so I'm going to be leaving. If you have any questions, I'll be glad to answer any questions.

AC Coyner called for questions from the Commission.

Comm. Crawford stated I guess it's not a question, Mr. Hall. I have never had the pleasure of hearing from you before and you're obviously articulate and knowledgeable and I respect that and appreciate your time and efforts here. But I got to tell you there's no way to garner support and cooperative relationships by slandering the good works of some very dedicated employees by accusing them of being a little too close to industry. That's just not acceptable to good working relationships in my book.

Mr. Hall stated well, I've taken it for four years and it's my opinion and belief that government here gets a little too close and doesn't invite in other people. For example, if you hold meetings only during the daytime when people are working, you're really freezing out the public. And they're knowledgeable people in the public that would like to participate and they can't do that. And notices, frankly some of them are terrible. I've gotten notices recently that have no date on them. I don't know what the heck the date was that they issued the thing. There's a lot of little things. I didn't mean that to be a slam against Allen, but frankly it is a thing that permeates government in this State and there is such a thing as being a little too close. If you invite knowledgeable people in that have, I'll give you an example, Dr. Paulsen on water issues, he can make a contribution. He's fed up. He's been told in meetings that you can only speak for three minutes, he can't get the notices, and so forth and so on. So a lot of these people that can make contributions are turned off. I'm the last remaining one. But if I thought there was one little opportunity to reach attainment and conformity by cooperation and working with these people, I would obviously take that route. I can assure you there isn't a little tiny bit of effort in that area and I can tell you what's happening down here. They're putting together a new organization made up of partly from Clark County Health District and partly from Comprehensive Planning. It's our opinion and belief from what we've seen so far and the interviews they're conducting with new employees, that they mean to get the least educated group of people that they can find, people that they can wind up and tell them exactly what to do and in some cases and I'll give you specific names, addresses and instances where they've gotten people like DUI's and so forth and so on and they can keep them right under their thumb and they

don't want to speak out. Now those, this is what's coming out of the Senate Bill 432 situation. If you don't believe me on any of this and if you want the proof, get on my Web site and I think, I forget which of the four volumes it is, but it's spelled out in detail just how bad it is. And I was being polite.

AC Coyner stated thank you Mr. Hall. We've strayed a little bit from the FOAV and there's time in public comment as well for the more generic nature of your comments.

Mr. Hall stated I'm going to be leaving, but the point I'm making is that Nevada Power in this situation is getting away and the public is taking it in the neck again.

AC Coyner called for further public comment. Since there was none he called for a motion from the Commission to accept the settlement on NOAV 1394 to 1404.

**Comm. Crawford made a motion to accept the settlement.**

**Commissioner Gifford seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**  
**B. Al's Excavating; Notice of Alleged Violation #1432**

Mr. Taxer reported the second item is an NOAV for Al's Excavating. This is a small excavating company that operates in the Carson City area. They currently own a 26 acre surface area disturbance in Carson City and the site was inspected on April 24th. The reason for the inspection was our inspector was at a neighboring facility, noticed the disturbed area, and thought it would be prudent to take a look at the site. Upon coming back to the office it was determined that a permit had not been filed for the surface area disturbance. An enforcement conference was held on May 2nd. During that conference it was brought out by the facility owner that the disturbance initially consisted of 4 acres that was begun in September of '99. And since there was a 4 acre site, which is less than the 5 acre de minimis value for obtaining a permit, a permit was not obtained at that time. However, at the beginning of April the facility was expanded to a 26 acre surface area disturbance for another project since the first project had fell through. NAC 445B.275 requires an operating permit for any disturbance greater than 5 acres and also a fugitive dust plan for any project greater than 20 acres. Subsequently, NOAV 1432 was issued for the facility. The facility owner stated that he was unaware of the need for a permit even though in the Carson City area there is a very common practice for all excavating projects to obtain surface area disturbance permits. And he did, indeed, submit an application for a permit on April 27th, three days after the initial inspection.

A penalty was determined in the amount of \$450 for the violation. This represents a minor potential for harm in that no fugitive dust was observed coming from the site. But it represents a major deviation from the regulatory requirement for operating without a permit. This translated to a \$600 per day penalty and

since it was their first violation we considered one month of violation to equate to a day's worth of penalty and since he was only operating for three weeks we prorated that down to the \$450 amount. At this time we recommend ratification of the \$450 penalty.

AC Coyner called for questions from the Commission.

Commissioner Gifford stated just a point of clarification and I just didn't quite catch it all. I think you almost answered my question, but it has to do with the sentence at the bottom there where it says, "A penalty in the amount of \$600 per day was agreed upon" and you started at the beginning of April and you had the unscheduled inspection on April 24th, so I see where the 3/4ths of a month comes from. And how did you just settle in on 3/4ths of a day?

Mr. Taxer explained by equating a month's worth of violation to be a day's worth of penalty. So instead of calculating the penalty on the actual per day value, we looked at the month to be a day in determining that penalty and the reason we did that was because it was his first violation and we didn't think it was appropriate to assess a penalty on the actual true per day period that he was in violation or in noncompliance.

Commissioner Gifford asked and had there been any complaints at all in terms of dust?

Mr. Taxer answered no, which is why we used the low value on the penalty matrix in determining that amount. It considers the fact that there was no potential for harm since there were no visible emissions observed. We considered the portion that addresses the fact that he was out of compliance with the regulatory requirement in an effort to maintain a more equal playing field amongst all participants and for people who do obtain surface area disturbances.

Commissioner Gifford stated I'm not disagreeing with what you settled on. Probably the only reason that there was minor potential for harm was the fact it must have been a windless day at the time because otherwise it probably wouldn't have been the case. But alright, thank you.

AC Coyner called for other questions or comments from the Commission and then called for public comment. Since there was none he called for a motion to approve the penalty.

**Comm. Trenoweth made a motion to approve the penalty.**

**Comm. Crawford seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**  
**C. Frehner Construction; Notice of Alleged Violation #1431**

Mr. Taxer reported Frehner Construction, in addition to the many portable road construction facilities that they have throughout the State, has also been contracted by the Nevada Department of Transportation for grading of the Carson City Freeway Bypass project. This facility was inspected on April 12th. Again, our inspector was out at a neighboring facility and noticed all the activity that was occurring due to the project and wasn't quite sure what the project was, came back to the office, determined that there was no permit obtained for the facility and that it was related to the Bypass project. Before we had an enforcement conference with Frehner, we had a general enforcement coordination meeting with all of the participants on April 21st. We invited NDOT, Frehner, Carson City, their contractor for the utility relocation and all the other utilities who were providing relocation efforts for that whole project. The purpose of that meeting was to determine who was the responsible player for all the activity that was going on at the site. At the time it was generally believed that the best approach would be to have Frehner Construction be the primary contact for that activity and the primary contact for any fugitive dust emissions that might be occurring from the site. In fact, they had obtained a permit on April 12th, immediately following the inspection of that facility. We then proceeded to have an enforcement conference with Frehner on May 2nd. We determined at that time that grading activity began on April 3rd and that there were eight days of activity associated with that period of time. As a result we issued NOAV 1431 for operating without a permit. In determining the penalty for this project we consider the fact that there were no fugitive emissions observed during the inspection, so that was a minor potential for harm and yet there was a major deviation from the regulatory requirement to operate without a permit. We looked at the base penalty of \$600 per day and we increased that by a factor of 70 percent to reflect Frehner's history of past noncompliance. This equated to a per-day penalty of \$1,020 per day. Since this was not Frehner's first violation, since they have had quite a record, we did not think it was appropriate to do the one month equal a per day thing, we assessed the penalty on an actual per-day basis for a total penalty of \$8,160. We recommend ratification of that negotiated penalty amount at this time.

AC Coyner called for questions from the Commission.

Commissioner Gifford stated on the second page where you've put together the past record of violations, on the top two, 1731 and 1370, are those still under consideration with the word "proposed" in there, or is that just, they're taken care of?

Mr. Taxer answered no, those were settled (inaudible).

AC Coyner stated while you're thinking, Eric, on that, I don't see any 1999's in here either and I thought for sure we had them in here in '99.

Mr. Taxer explained actually 1999 was a weird year. We fined them in 1998, in the fall of 1998 and in December and then it was a result of the December violation that the Commission decided to proceed with the NOAV and the Stipulation and Order to do the whole auditing procedure that occurred in 1999. But a penalty was not assessed in 1999, nor was there any further enforcement action taken. It was just the process of implementing that self-auditing procedure.

Commissioner Johnson asked you're saying that there were no violations in '99? That we had the hearing on the settlement in '99, but as for a violation on this December 18th . . .

Mr. Taxer answered you had the hearing in December of '98 and then we had a follow-up hearing, I believe there was one in early '99, but then there was a big hearing in September of '99 where we reported back to the Commission on Frehner's activity and insuring compliance with all of their portable facilities throughout the State.

Commissioner Johnson asked so it was just a report on their compliance from a previous action?

Mr. Taxer answered right. So there was a lot of activity with the Commission on Frehner, but there wasn't any new enforcement activity that came to the Commission.

AC Coyner asked would this indicate a failure of your education process of them? Since Mr. Matthews has come before the Commission I think he would have known that he would have had to have a permit for this. But, yet it says they began activities on April 3rd prior to obtaining their permit. Did they just forget? Or had they scheduled it and just hadn't gotten to it?

Mr. Taxer answered part of the problem may have been their coordination with the Department of Transportation in that they felt that NDOT had obtained the permits, NDOT felt that they had obtained the permit and there's probably a lack of communication between them.

Comm. Crawford stated I think one of my first Commission meetings was when we told Mr. Matthews that we saw him way too much and maybe he shouldn't come back anymore. So, hopefully, that process did work in '99. Eric, does anybody have a worse record in this arena than this group?

Mr. Taxer answered there are a couple of facilities that come close.

Comm. Crawford asked you don't recall what the disposition of 1731 and 1370 are?

Mr. Taxer answered no, those penalties were actually proposed to the Commission, but were not ratified by the Commission. They were associated with the two NOAVs that recommended the penalty and also recommended the compliance order to have them do the whole self-auditing procedure. The Commission at that time did not ratify the penalties, but instead ratified the compliance order to require Frehner to do the compliance effort in 1999.

AC Coyner asked we didn't penalize them on those two? We didn't financially penalize them on 1731 and 1370?

Mr. Taxer answered correct. But you did proceed with issuance of the NOAV and with the compliance order that was required by those NOAVs.

Commissioner Iverson asked this is the entire list including penalties, etc?

Mr. Taxer answered correct.

Commissioner Iverson asked and the ones that we talked about in 1999 and addressed at the Commission meeting were all 1998 penalties? I'd almost have to go along with Alan. I think the first meeting he chaired was at the Department of Tourism and I can't believe it was in 1998, but maybe it was. We had a fine at that time because we discussed that. I thought we discussed it at the last Commission meeting also.

Mr. Biaggi explained that was Granite.

AC Coyner commented that the last four, 1347, 48, 70 and 31, had no financial penalties assessed against them. He then called for further questions from the Commission and for public comment. Since there was none he called for a motion.

**Comm. Crawforth made a motion to accept the NOAV as stated.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

Commissioner Iverson stated in 1998 we had a whole list of violations. In 1999 we had zero. That was after we indicated to them that it would be nice to come back and ask for some kind of an outline of their training program and it looks like then that there was some significant changes in '98 and '99. Have we made that same recommendation to other major companies that seem to appear in front of us a lot?

Mr. Taxer explained the only other company that that would be appropriate for is Granite and we've done not the exact same thing, but we've done similar things. We've required them to do some in-house training. I'm trying to remember off the top of my head on their last violation what we required of them. It was more of an overall dust control plan for their projects because their violations were more related to fugitive dust emissions from their excavation work.

AC Coyner moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**  
**D. KG Walters; Notice of Alleged Violation #1433**

Mr. Taxer reported K.G. Walters is an excavating company that is contracted to do grading and construction work associated with the waste water treatment plant being constructed in Silver Springs, Nevada. This consists of an 8 acre surface area disturbance. It was inspected on March 22nd to follow up on a fugitive dust complaint that was received by the Division. During the March 22nd visit, we notified K.G. Walters that they were operating without a permit. However, we did not observe any fugitive dust emissions ourselves at the time of the visit. K.G. Walters indicated that they thought that the Silver

Springs General Improvement District had obtained the permit and we indicated to them that no such permit existed and that they were responsible for getting that permit. We contacted K.G. Walters again on April 28th to state that we still have not received an application for a permit and that they really did need to get that submitted. We also noted that our permitting office had sent them a fax in December of 1999 of a permit application so that they were aware of the need to obtain a permit for their operations.

An enforcement conference was held on May 3rd. At that time K.G. Walters acknowledged receipt of the permit application package on December 28th. They reiterated their belief that they thought that the G.I.D. had obtained the permit and they also submitted their permit application at the time of that enforcement conference on May 3rd. We then felt it was appropriate to issue the NOAV for operating without the permit. At the time we negotiated the penalty in the amount of \$1,500. This represented a minor potential for harm since we, ourselves, did not observe any fugitive emissions even though we did receive a complaint for it. We also considered the fact that it was a major deviation from the regulations. Additionally, we added a 25 percent factor to represent the circumstance that they had prior knowledge of the need to obtain a permit prior to operating. And then we looked at, since it was their first violation, we considered the two months period of noncompliance to equate to a two day period for calculating the penalty. So, that's how we came up with the \$1,500. So, at this time the Division recommends ratification of that proposed amount and I believe there might be somebody from K.G. Walters here to address the Commission on this matter.

AC Coyner called for questions from the Commission.

Commissioner Gifford asked a proper notification of the need for a permit, was that a prior notification for this project or for a previous project or . . . ?

Mr. Taxer answered for this project.

Commissioner Gifford asked was it was just ignored?

Mr. Taxer answered I don't know if it was ignored so much as there may have been some miscommunication between K.G. Walters and Silver Springs on who was going to get the permit. We sent the fax to K.G. Walters. So, whether they felt that Silver Springs was to get the permit, or whether they should get the permit, it's our belief that it was their duty to follow up on that irrespective of who they felt should get the permit.

AC Coyner asked do you know the size of the disturbance? I think I see in the field report, or at least I can read something about the SAD in question is 8 acres . . .

Mr. Taxer answered correct.

AC Coyner stated I'm thinking about this in terms of our first NOAV that we looked at 26 acres for, in an ignorance-type of mode. And now we're in another ignorance-type of mode and we're looking at 8 acres

and we're looking at is that \$650 or \$450 and we're looking at \$1,500 for a smaller disturbance. Can you help me with that a little bit? And I also note in here that the statement was made that K.G. Walters had obtained an SAD permit application in December 1999 from Ralph Capurro, which would pre-date this inspection. So, is there a time line issue there? Also, please address the equality issue.

Mr. Taxer addressed the equality issue first. He stated for both projects we looked at the same base penalty amount. Both projects do not have any potential for harm because we did not observe any fugitive dust coming from those two projects and both projects represented a major deviation from the regulations. So, the base penalty for both of those is \$600 per day. The size of the two projects do not come into play in considering the penalty amount and that is because there were no observed emissions coming from the two respective projects. For Al's Excavating we took that \$600 base penalty amount and prorated it down to the three weeks of noncompliance. So a 3/4 of a day penalty. For K.G. Walters we considered two months of operating without the permit and considered that two days of noncompliance and two days of penalty. And also for K.G. Walters we added a 25 percent factor that was not considered for Al's because K.G. Walters had definite prior documented information, that at least we could document, that they did indeed receive a permit application package notifying them of their need to get a permit for their project.

AC Coyner stated so, it's an interplay between notification, ignorance, size, and time that it's exposed to the elements for the potential for harm too is all factored in there.

Mr. Taxer stated correct.

Commissioner Gifford stated one other point that I would call to your attention, the first sentence of paragraph number 2 where it says they were actually following up to a fugitive dust complaint so it had been producing dust. It just wasn't on the day when you were out there?

Mr. Taxer answered right.

Commissioner Iverson asked how large of a company is this? Do you have any idea?

AC Coyner stated we'll hear from K.G. Walters. He asked if there were any more questions for Mr. Taxer. Since there were none he called upon Walt Johnson.

Walt Johnson introduced himself as being with K.G. Walters Construction. He stated to your question, we do about \$10 million a year. We're a wastewater and water treatment plant contractor, general contractor. A couple of things I wanted to touch on, one of the reasons I was here is this is our first citation with this Department. Typically, the projects we do are on existing plants or small plants and the five acre minimum does not come into play. The reality is our people dropped the ball on the paperwork side. There was some confusion. One of my guys in the field thought that the Silver Springs G.I.D. was taking care of it when, in fact, we should have followed through.

One of the reasons I'm here to talk is because as a first violation once we found out there was a problem we tried to do the right thing. A permit application was faxed off two days after we were made aware that we were out of conformance in not having a permit. My understanding is the entire time the dust was under control. The report of dust which prompted the inspection at the start the location where this project is, I'm not real familiar with Nevada, but it's Lahontan Reservoir Silver Springs area. There's going to be a development around this new wastewater treatment plant and the area, I don't know, is probably 60 - 70 acres. So we're working in the middle of this in a fenced-off area of 8 acres, which the dust is controlled. Two water trucks working full time taking care of the dust. So, when the winds kick up out there a good part of the State is blowing to Utah, not necessarily our plant site. And I think that's what prompted the call probably. The dust kicks up there pretty good in the afternoon. Many days we have shut down completely just because we can't deal with it. My concern was this was a major violation on our record which we have none to date. We've been working in the State for about 16 years. I received a fax on Friday of a log of alleged violations and I just wanted to make sure that we were in the right range for first-time violators. Prior to this meeting it appeared that there were five to six non-permit violations for this year basically going back six months. It looked to me like four of them were possibly dismissed, which now I heard about Frehner and they were not. So, my biggest concern was to make sure that this being our first-time violation we were not being treated unfairly. We were trying to do the right thing. The permit was sent in and two days after we were notified then somehow it was lost. It was faxed in and I think that was, again, a fault of my field people. It should have been hand-carried in and it will be next time.

AC Coyner called for questions from the Commission and members of the public. Since there were none he called for a motion.

**Comm. Crawford made a motion to affirm the settlement agreement on NOAV 1433.**

**Comm. Trenoweth seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item No. V Division of Internal Audit's recommendation regarding a State Environmental Commission request for the State Board of Health to designate a representative with a medical background.**

Mr. Biaggi greeted the Chairman and Commission members and introduced himself as being with the Division of Environmental Protection. He stated as you'll recall in past meetings I've mentioned that we were undergoing an audit from the Division of Internal Audits concerning the consolidation of certain programs within the Division of Environmental Protection and certain programs within the State Health Division. That audit began on January 5th of this year and was completed in approximately May of this year. In your packet you have Appendix D of that audit which was about 25 pages long. Appendix D contains the timetables for implementing audit recommendations that were recommended by the Division of Internal Audits. There are nine total recommendations, some of which apply to the Division of

Environmental Protection, some of which apply to the State Health Division. If you'll look at page 22 of Appendix D, Item No. 6 states as a recommendation that the State Environmental Commission should request the State Board of Health to designate a representative with a medical background. As you are aware, one of the statutory members of this body is a member from the State Board of Health. That position is currently filled by Commissioner Jones. This recommendation suggests that Commissioner Jones' background which is in the construction industry is not appropriate and should be replaced with a representative of that body who has a medical background. Consequently, I'm here today to ask for a direction from the Commission to write a letter to the State Board of Health implementing this recommendation that the State Board of Health member should have a medical background. With that, I'd be happy to answer any questions you may have.

Comm. Crawford asked does the statute say State Board of Health?

Mr. Biaggi answered yes.

Comm. Crawford asked is that why that's there?

Mr. Biaggi answered yes.

Commissioner Iverson asked when does Commissioner Jones' term expire? Aren't we on terms?

Mr. Biaggi answered Mr. Jones is not on a term. He is serves at the pleasure of that Board. Is that correct David?

Mr. Cowperthwaite answered yes. Mr. Jones is sitting on the Board of Health as a public representative. His term is tied to the State Board of Health term and their delegation there is open-ended in terms of his term, unless they decide to rescind it.

Commissioner Johnson commented is it appropriate for this Commission to suggest to the Department of Health what their criteria should be for appointment. It would seem to me that compliance to this would better be directed from the Governor's office to the Department, or the Health Board rather than to us.

Mr. Biaggi explained this is being directed from the Governor's office. The Division of Internal Audits works under the Governor under the Department of Administration.

Commissioner Johnson stated but it's the audit report demand or request to the Board of Health. My point is, is it appropriate for me to ask them to make this change in their criteria?

Mr. Biaggi stated I see where you're coming from Commissioner Johnson. I don't know. We kicked that around with the auditors a little bit, who should make that recommendation and this is the way that the audit recommendation came about. So I'm obligated to bring that forward to this body.

Commissioner Iverson asked do they want this body to make that recommendation Allen? Are they saying this is what we want or did they want to write a letter?

Mr. Biaggi answered no. If you direct me to do so then I will direct David to do so as the Executive Secretary of the State Environmental Commission. I've talked this over with Mr. Jones and he understands the situation and the issue. So, I guess the way the process would work is if you feel that it's appropriate, and in light of this recommendation and implementing that recommendation, we will make the effort to write the letter to the State Board of Health to make it happen.

Comm. Crawford asked where did the medical background come from? That's not in the statute? What was the thinking of the internal auditor to come up with a medical background?

Mr. Biaggi answered I think where they're coming from is that in the past the Board of Health representative has been a medical doctor or at least someone with a health background. Mr. Jones is a construction person and, statutorily, the makeup of this Board also includes a person from the construction industry and that position is currently being served by Mr. Doppe. So, I believe it was the findings of the audit that there is a piece lacking here that they felt the intent of the legislature was to fill a medical background person on this body. This is the State Environmental Commission, but it does have a health component to it, from a health person from the State Board of Health.

Comm. Crawford asked so the audit really didn't share with you why they divined this should occur? Mr. Biaggi answered this started out as a consolidation audit and then probably in about March it spun off into a little bit different of a direction and we got these nine audit recommendations. So, I think maybe somewhere along the line someone said to the auditors, "Did you know that there's a member at the State Board of Health that is not a health professional? He's actually a building professional." And somehow they felt that was an appropriate recommendation to make within the findings of the audit.

Comm. Crawford asked and there is no term on that position? It's indeterminate based on who the Board of Health appoints?

Mr. Biaggi answered that's correct. As David has indicated, that is somewhat dependent upon the term of the individual serving on that Board. So there may be people on that Board who don't have term limits and theoretically they could put that person on this body which would put them on indefinitely. So I think it just depends upon the individual that they'd select to sit on the Commission.

Commissioner Iverson stated (inaudible) because you're going to have to do something. Whether we do it, or you do it, or David does it, one of us is going to have to do it.

AC Coyner stated it's agendaized as an action item. If you'd like the pleasure of us making that motion to authorize you to do so we'd be happy to do so.

**Comm. Trenoweth made a motion to direct the Division to write a letter to the State Board of Health implementing the recommendation from the Division of Internal Audits that the State Board of Health member of the Environmental Commission should have a medical background. Commissioner Johnson seconded the motion.**

**The motion carried unanimously.**

AC Coyner moved to **Agenda Item No. VI. Status of Division of Environmental Protection's Programs and Policies**

Mr. Biaggi stated first off, in old cases, the Jarbidge case is continuing. We did get Judge Wagner's order last month or early this month. And we are reviewing that order in light of the ongoing mediation and a decision will be made shortly on whether or not to appeal that order to the State Supreme Court. As you are also aware, there is ongoing mediation activities in the Elko area concerning the U.S. Government, Elko County, the Division and the private parties. Leo Drozdoff is participating for the Division in that mediation effort and is in Elko County today. We are hoping that mediation will be successful and that an agreement will go before the Elko County Commissioners on June 28th and that that will be approved at that time. At the same time, Demar Dahl is actively involved in an effort at the 4th of July between a number of private individuals to stage a peaceful demonstration in the Jarbidge area in support of Elko County's efforts to reopen the road. We're not involved in that. It's my understanding that Mr. Dahl has indicated, at least from newspaper accounts, that they have no intent of disturbing the waterway or impacting the bull trout which are present in the south fork of the Jarbidge river. So, we'll see where that goes and it will be an interesting two or three weeks. Any questions on Jarbidge?

AC Coyner asked could the mediation agreement obviate the need for us to appeal that decision?

Mr. Biaggi answered it could, yes. With regard to Western Elite, which has been an ongoing case for quite some time, we finally received an order from the judge in that case approximately two to three weeks ago. The judge completely upheld the State Environmental Commission in their findings of law and of fact and it is my understanding that Western Elite is appealing that decision of the judge to the State Supreme Court. They have appealed. We anticipate that that will go before the Supreme Court probably in a year and a half to two years. I guess some of the good news is that we don't believe Western Elite is taking any more waste at this time. We believe that they are making some usable product and are selling it. And we are continuing to work with Western Elite on attempts at a settlement that will eliminate the need to go to the State Supreme Court; however, we are having problems getting financial information from Western Elite. So, that case is continuing.

Some other issues ongoing with the Division is we just completed an internal audit. We are working on those recommendations and are making good progress on them. We have drafted an internal strategic plan that has been sort of a ground up effort to make the Division more effective, more efficient, and a more satisfactory place to work for our employees. If any Commission member would like a copy of that plan, I would be happy to provide it to them.

We are also undergoing an audit of our State Petroleum Fund. This was an audit that was requested by the agency in March of this year. The auditors came in in mid-May and are scheduled to complete that audit probably in the July/August time frame.

On the personnel front for the Division, we have approximately 15 vacancies ongoing and we're finding it very, very difficult filling many of our positions, particularly our engineering positions. We are finding that with the good economy it's a very tight job market out there and State salaries are not commensurate with what these engineers can make either in private industry or in county or local governments. As a consequence, we're having a very difficult time filling those positions both here in southern Nevada and in northern Nevada.

We're ongoing with our budget preparation activities in anticipation of the August 15th submittal to the Governor's office. We are maintaining a relatively flat budget. We are requesting a couple of new positions in light of increasing case loads, but for the most part it will be commensurate with FY 2000 levels.

We are also seeing ongoing activities with regard to mining bankruptcies. We are still continuing to operate fluid management activities at the Arimetco site in Yerington. We are expending approximately \$16,000 a month on those efforts. We're using State mining fees at this time to pay for those activities. If necessary we will switch over and use hazardous waste funds. And just last week, I also got authorization to utilize the State's disaster relief fund to the tune of about \$300,000 for those efforts. We have a number of other sites, however, which are going into bankruptcy. That includes a number of sites related to Alta Gold, Mineral Ridge, and Aurora Partnerships. We're doing everything we can to make other people pay for those activities and not the State of Nevada. But, if push comes to shove and a release is eminent, the State will step in and take whatever emergency actions are necessary to prevent that release. At the Arimetco site, Dave Gaskin, who is gone now, but has been working very hard to work with the industry to get whatever activities are necessary to increase evaporation and to reduce the need to provide fluids management of those sites.

Some of the future issues that will be coming before this body in the next couple of months: you heard today from Mark Zusy that we'll be bringing Chemical Accident Prevention regulations forward regarding explosives manufacturing in the near future. That is related to the explosion at the Sierra Chemical facility in Sparks and is a result of the ten legislative actions that were passed by the 1999 session of the Nevada legislature. Tom Porta will be bringing regulations forward concerning Walker Lake and the Walker River and water quality standards and those will be relatively controversial in that they have typical western values of agriculture, water rights, and recreation and tourism activities. We also have a large body of air regulations coming forward in the near future. Those dealing with Part 70 or Title V regulations, construction and operating permits, a split of Class I and Class II permits, a registration program to register rather than permit very small air pollution sources and some regulations regarding opacity. So with that quick overview, I'd be happy to answer any questions you may have on these issues or other issues with the Division.

AC Coyner called for questions from the Commission.

Comm. Crawford asked do we have any idea where and when the next Commission meeting will be held?

Mr. Cowperthwaite stated at this point we're probably looking to give you the rest of the summer off. We're probably looking at September. At this point LCB is drafting the petition. It probably will be available at the end of July. If you would like to do field tour relating to the Walker River and the lake, we will set that up also. The meeting will probably be held in Yerington, Fallon, or Hawthorne.

AC Coyner commented on the Emergency Preparedness Fund. He stated I was disappointed that we couldn't move forward on that because I sit in meetings on the Commission surrounding some of the mining operations and the desperate need for the federal and state regulators whose hands are tied in these bankruptcy proceedings to access monies that could prevent a very emergency short-term type of thing that could happen at one of these sites. So, I certainly hope we can resolve linguistic authority issues with our State brethren here so that we will no longer have the situation of having industry standing there at the door saying, "Here's a million dollars to help you solve that problem" and having to tell them, "No, we can't accept your money."

Commissioner Johnson stated we can't come to terms for two months or two sessions.

AC Coyner stated that's disturbing to me and I certainly hope we can move forward on that.

Mr. Biaggi stated it's disturbing to me too and you're right. You know, you've got industries stepping up to the plate to do the right thing and it comes down to language issues with regard to, you know, where do you put these regulations and how do you tie it to a permit? And that's really the bottom line here. So what I intend to do is go over to LCB, meet with the head of the legal division and hopefully we can work out a resolution to this in relatively short order and have this to you at the next Commission meeting.

AC Coyner stated I guess I hear you saying that you've got \$300,000 to tide you over until September.

Commissioner Iverson asked Allen, one of these meetings, maybe not the next one especially if it's in Yerington and we're talking Walker River (inaudible). Will you consider having our new petroleum chemist come in and do a little dog-and-pony show, 10 minutes, 15 minutes tops? Fuel standards, what he's doing, (inaudible) and how it ties in with (inaudible)?

Mr. Biaggi answered we'll be happy to do that. I think it would interest not only our staff, but the Commission as well.

AC Coyner called for further comments from the Commission.

Commissioner Johnson asked do we anticipate that we will see anything down the way in regulatory requirements from the 432 report that's just been out?

Mr. Biaggi answered Jolaine has been sitting on the 432 committee as the State's representative. So I'll let her address that.

Ms. Johnson stated I have been involved with the technical support committee to that committee and have reviewed the recent recommendations made by Environ, who is the contractor that the legislative committee hired to do a full evaluation of these programs. Their final recommendations include considerably increased State oversight to the Clark County program. Now, what the Legislative Commission does with that recommendation is still to be seen. I do have a request from LCB to put together a funding or staffing analysis for meeting those recommendations that Environ comes through with and I'm afraid that my initial assessments indicate that we need substantial staff to provide the oversight that they are recommending. They also are saying that this body has significant authority over the Clark County Air Quality Program now. I disagree with that and will say so in comments to the report. But, I'm not sure what the SB 432 committee will do with that.

Commissioner Johnson stated I mean part of the justification, and I think from past history with Mr. Hall's complaint in the past was simply that we have authority only after we say that they're inadequate. And, of course, some people would argue that if they fail in bringing into compliance, that there's a priority argument. But, I would agree with you that I don't sense any authority short of making that statement of inadequacy and I think that's what the Attorney General's office had held in the past also. Mr. Biaggi stated yes and I think that you'll recall that Mr. Hall brought this issue before the Commission two years ago at least and this body did not find that the Clark County's program was inadequate and, you know, consequently things have moved forward. Another issue that's ongoing sort of related to the 432 committee is that in anticipation of those recommendations I think you're seeing an effort on the part of Clark County to reorganize their programs voluntarily and that's an effort that's ongoing right now by Commissioner Kinney, who is very concerned about this issue and also sits on the Health District Air Board. So, there's a little effort on the part of Clark County to forestall the recommendations of the 432 committee and get it done prior to that body acting. And it's my understanding just from reading the

newspaper accounts that that reorganizational effort does not include the State nearly to the same degree as is being recommended by 432.

**AC Coyner adjourned the meeting at 3:30 p.m.**

## INDEX

agenda	1, 5, 16, 32, 37, 41, 45, 47, 49, 52, 55
Al's Excavating	45, 51
bankruptcies	32, 56
Barrick	37, 38
Biaggi	16, 32, 33, 37, 38, 40, 49, 52-55, 57, 58
Bibb	16, 17, 22-25, 27-29
CAPP	5, 8, 10, 12
Clark	1-4, 41, 42, 44, 58
Close	1, 8, 13, 43, 44, 48
Commission	1, 2, 5, 10, 16, 22-24, 26, 27, 29-32, 36-38, 41, 42, 44-50, 52-58
compliance	1, 13, 14, 41, 46, 48, 49, 53, 58
Cowperthwaite	1, 10, 53, 57
Coyner	1, 4-6, 10, 13-16, 22, 27-32, 36-39, 41, 42, 44-52, 55, 57-59
Crawforth	1, 16, 22-25, 41, 42, 44-46, 48, 49, 52-54, 57
Cripps	2
Dahl	1, 55
DEP	2
Division	2, 13, 16, 29, 32, 34, 35, 40, 41, 50, 52, 53, 55-57
Doppe	1, 54
Drozdoiff	55
emission	1, 2, 4, 28, 29
EPA	2, 3, 6-8, 10, 12-14, 27
exceedence	3, 28-30
Exhibit	3, 6, 10
fees	5, 6, 8, 9, 11, 14, 16, 32, 38, 56
fine	37, 44, 49
Frehner	47, 48, 52
Gaskin	32-36, 39, 40, 56
Gifford	1, 27, 32, 34, 37, 39, 45-47, 50, 51
Haddock	37, 38
Hall	4, 5, 30, 36, 42, 44, 45, 58
ISO	17-21, 23, 25, 26, 29
Iverson	1, 11-13, 49, 51, 53-55, 58
Jarbidge	55
Johnson	1, 4, 5, 29, 30, 33, 35-37, 39-41, 48, 51, 53-55, 57, 58
Jolaine Johnson	29, 33
Jones	1, 53, 54
KG Walters	49
Kunzi	1
LCB	1, 5, 16, 32, 34, 37, 38, 40, 57, 58

legislature .....	6, 54, 57
Mansour .....	16, 22-24, 26-30
Mischel .....	1
Mojave Power .....	16, 30
motion .....	1, 5, 16, 31, 32, 41, 45, 46, 49, 52, 55
NAC 445B.400 .....	1
NAC 459.95334 .....	5
NAC 519A.010 .....	16, 32, 34
NAC 519A.360 .....	16, 32, 33
NDEP .....	24, 26, 28, 29, 33, 34, 38
Nevada Power .....	26, 41, 42, 45
NRS .....	38
OBD .....	1-4
opacity .....	16, 21, 23, 26-31, 57
penalties .....	11, 13, 42, 48, 49
permit .....	45-48, 50-52, 57
Petition 2000-07 .....	1, 5
Petition 2000-08 .....	5
Petition 2000-09 .....	16, 32, 41
Policies .....	30, 55
regulation .....	1-7, 9, 13, 16, 32-35, 38
Scheidig .....	37
SIP .....	2, 3, 30, 43
Smitherman .....	2, 4
sources .....	5, 10, 12, 42, 57
Southern California Edison .....	16, 19-22, 30, 31
State Board of Health .....	37, 52-55
Taxer .....	41, 42, 45-51
Title V .....	57
Trenoweth .....	1, 5, 16, 32, 41, 46, 49, 52, 55
Turnipseed .....	1
variance .....	16, 17, 20-32
visibility .....	23
Wash .....	41
Washoe .....	3
Western Elite .....	55, 56
workshops .....	2, 3, 7, 9, 33
Zusy .....	5, 6, 10-16, 57

Nevada State Environmental Commission  
Regulatory Hearing  
Exhibit Log

Hearing Date: June 20, 2000

Location: LV Valley Water District

#	Item	Item Description	Reference Petition #	Offered	Accepted
1	1 Page Memorandum	Memorandum from Colleen Cripps regarding language change dated June 16, 2000	2000-07	Yes	Yes
2	1 Page Letter	Letter from Mark D. Williams, Aervoe-Pacific Company, Inc., regarding CAPP Program approach and implementation of proposed fees dated April 20, 2000	2000-08	Yes	Yes
3	1 Page Letter	Letter from Ray Bacon, Nevada Manufacturers Association regarding CAPP Fee Increases dated June 5, 2000	2000-08	Yes	Yes
4	1 Page Letter	Letter from Russ Fields, Nevada Mining Association regarding Process Fluid Management Bonding and Interim Fluids Management Fund dated March 23, 2000	2000-09	Yes	Yes
5	1 Page Letter	Letter from Russell Roberts, Clark County Department of Comprehensive Planning regarding On Board Diagnostics II Regulation dated June 15, 2000	2000-07	Yes	Yes
6	1 Page Letter	Letter from James Detmers, California ISO, to Mel Close regarding Opacity Variance - Mojave Generating Station dated June 15, 2000	Agenda Item No. IV	Yes	Yes
7	1 Page work sheet	Timelines for when On-board diagnostic test equipment would be required (as prepared by the Bureau of Air Quality)	2000-07	Yes	Yes
8	6 Page Variance Request	Letter and variance dated June 19, 2000 to Melvin Close, Chairman of Environmental Commission from Southern California Edison petitioning the Mojave Generating Station a variance to NAC 445B.354 and 445B.357 for opacity.	Agenda Item No. IV	Yes	Yes
9	4 Page presentation	Slide presentation of the Bureau of Waste Management for the CAPP fee increase	2000-08	Yes	Yes
10	10 Page presentation	Overhead presentation by Southern California Edison for the Opacity variance during system emergency at the Mohave Generating Station.	Agenda Item No. IV	Yes	Yes
11	1 Page letter	Letter from City of Bullhead City, Mayor Diane Vick, dated June 15, 2000 supporting the Southern California Edison opacity variance request for the Mojave Generating Station.	Agenda Item No. IV	Yes	Yes

Nevada State Environmental Commission  
Regulatory Hearing  
Exhibit Log

Hearing Date: June 20, 2000

Location: LV Valley Water District

12	1 Page letter	Letter from Laughlin Town Advisory Board, Lorraine Haywood, Chair dated June 13, 2000 supporting the Southern California Edison opacity variance request for the Mojave Generating Station.	Agenda Item No. IV	Yes	Yes
----	---------------	---	--------------------	-----	-----

#	Item	Item Description	Reference Petition #	Offered	Accepted
13	11 Page overhead presentation	Presentation by California ISO, Tracy R. Bibb, Director of Engineering and Maintenance regarding the Mohave Generating Station Briefing before the Environmental Commission.	Agenda Item No. IV	Yes	Yes

C:\SEC\_WEB\HEARINGS\2000\H062000.wpd