

1 **STATE ENVIRONMENTAL COMMISSION**
2 **Meeting of June 19, 2003**
3 Nevada Division of Wildlife
4 Reno, Nevada
5 Adopted Minutes
6

7
8 **MEMBERS PRESENT:**

9 Alan Coyner, Vice Chairman
10 Terry Crawford
11 Mark Doppe
12 Don Henderson
13 Joseph L. Johnson
14 Richard Reavis
15 Hugh Ricci
16 Joey Villafior
17

MEMBERS ABSENT:

Melvin Close, Chairman
Demar Dahl
Steve Robinson

18 **Staff Present:**

19 Deputy Attorney General William Frey, Deputy Attorney General
20 Marcia Manley – Acting Executive Secretary
21 Sheri Gregory - Recording Secretary
22
23

24 Vice Chairman Coyner called the meeting to order. He noted that the agenda had been properly noticed in
25 compliance with the Nevada Open Meeting Law.
26

27 **Agenda Item I. Approval of Minutes from the November 19, 2002 meeting.**

28
29 **Commissioner Johnson motioned to adopt the minutes from the November 19, 2002 meeting.**

30
31 **Commissioner Henderson seconded the motion.**

32
33 **The motion carried unanimously.**

34
35 Vice Chairman Coyner moved to **Agenda Item II. Memorializing of Commissioner Iverson**

36
37 He stated as you know Paul was sick with leukemia last summer and fall and had passed away and I'd asked
38 Don Henderson to say a few words about Paul and the services that we had.
39

40 Commissioner Henderson stated it was a great loss for the State and for the Department of Agriculture when
41 Paul passed away. It was a long and somewhat prolonged illness that he had. I guess the family and his
42 friends are thankful that his ordeal is over at this point. Paul was a heck of a guy. He was a State employee.
43 He had a 33 year history with the State and was well-known and well-liked and well-respected within State
44 government. He worked for the Department of Agriculture for seven years. Prior to that he was the assistant
45 administrator for the Division of Minerals and then prior to that he worked for the Department of Energy.
46 The seven years that he was with the Department of Agriculture was good for the Department of Agriculture.
47 He raised the awareness of the Department. He increased the professionalism within the Department and
48 during his seven years there he raised the status of the Department from a Division back to a cabinet level
49 status. In his essence, Paul was an educator and a promoter and sometimes that caused him problems. He
50 always thought of penalties as a way to get compliance and as long as you had compliance, he didn't think

1 that you needed the penalties aspect and sometimes that got him in trouble, but it was a unique perspective
2 and he always preferred to use education over a large stick to get compliance. So with that, he'll be missed.
3 The position will be advertised and announced with the expectation of maybe filling his position sometime in
4 November. So at that point there may be another appointment to this Commission. We'll miss him and I'm
5 sure a lot of members on this Commission will miss him. His family is doing well. I think they are
6 somewhat relieved that he has passed on to a better place.
7

8 Vice Chairman Coyner stated thank you Don. I know you'll do a yeoman's task during that time, both
9 running the Department and being a friend of the Iverson family. We appreciate that. Any other comments
10 from the Commission or thoughts? I have a couple. I just, in begging your indulgence, I'll tell one quick
11 story because it's a great story. Paul was an employee of the Division of Minerals for a number of years and
12 we credit him with several education programs that he started, both in the abandoned mine lands arena,
13 where the "Stay out and Stay Alive" program is alive and well in my Division now and also with teacher's
14 education. He was a great believer in getting the word out to the Nevada populous about the importance of
15 mining and minerals to our economy. But Don also used the word "promoter" and my favorite story about
16 Paul and one that Don told at the funeral was and in one of my first days of the Division was in a budget
17 hearing down in Carson City and I was new to knowing Paul at that point in my career and Paul was standing
18 up before a couple of committees of the legislature to talk about one of his favorite programs, at that time a
19 new program to the Department of Agriculture and that was Africanized honey bees. And Paul was seeking
20 more funding for the Africanized Honey Bee program and he went up to the table and he had a picture, I
21 couldn't really see the picture but it was a blowup on poster board and he got to talking about the fact the
22 Africanized honey bees were becoming a menace especially in Las Vegas and his impression that he wanted
23 to leave with that panel was this problem isn't one that we're going to face soon, this problem is here now.
24 And he holds up this picture and he had a picture of a man's arm completely covered in honey bees. Now I
25 don't know where he got that picture. He may have gotten it out of National Geographic for all I know, but
26 certainly the impression was that there was a man in Las Vegas somewhere standing there with Africanized
27 honey bees on his arm and he's waiving this picture wildly in front of the committee and saying, "We've got
28 a problem and we've got to do something now and I need the money." And of course he got his money. So
29 that was, in essence, Paul too. He believed very strongly in whatever he was assigned to do or wanted to do
30 with regards to programs. He martialled his resources and went to work and got the job done. So he'll be
31 missed.
32

33 Vice Chairman Coyner moved to **Agenda Item No. III. Certificate of Appreciation to David**
34 **Cowperthwaite.**
35

36 Vice Chairman Coyner stated as you know, David was our executive secretary up until recently when he
37 retired. We have a certificate we're going to give him a little later and we also are going to be taking him to
38 lunch, those of you that can join us. So we'll be looking forward to that and so when he arrives we'll do a
39 little special roasting of David as well.
40

41 Vice Chairman Coyner moved to **Agenda Item No. IV. National Water Quality Student Award**
42 **Acknowledgement and Commendation**
43

44 Kathy Sertic introduced herself as being with the Bureau of Water Quality Planning. She stated I'm very
45 pleased to be here this morning to present once again the Nevada Delegates to the National Youth Watershed
46 Summit. As you may remember you first met the four student delegates and their teacher advisor at the
47 September 2002 Commission meeting before they embarked to Washington, D.C. to go to the summit. At
48 that time they promised to report back to you with an overview of their experience. The watershed summit
49 was one of many national events held during 2002 to commemorate the 30th anniversary of the Clean Water
50 Act. This summit brought together more than 280 students and teachers from across the nation to expand
51 their knowledge of water quality issues and I'm very proud to inform you that the Nevada team won second
52 place out of 42 states for their exhibit that was based on water quality and quantity issues within the Walker
53 River basin. And I apologize, we were hoping to have the exhibit here for you to view this morning, but due

1 to some unforeseen circumstances it's not available. It's a great exhibit, and again they won second place so
2 we're very proud of them.

3
4 Also, unfortunately, due to work commitments, one of the students, Greg Bryant, is unable to be here this
5 morning. But we do have Sue Moreda, a teacher at Dayton High School, who acted as the student's advisor.
6 We have Dylan Conlin, who was the valedictorian of his graduating class at Fernley High School. Dylan
7 will be entering UNR this fall to study biochemistry. Jim Wilburger will be a senior at the Las Vegas
8 Academy of the Performing and Visual Arts. Jim is an accomplished pianist. And Ann Larquier who will be
9 a senior at Douglas High School. Ann took time out from attending Girl's State to be here this morning. So
10 these are a great group of kids and we are very proud of them. At this time I'd like to introduce Sue Moreda
11 and she will give you a brief overview of the summit and then the kids will describe a highlight of their
12 experience.

13
14 Sue Moreda stated it was quite a challenge and also an honor to work with these students. We worked
15 together well as a group considering that we came from five different communities and that was my
16 challenge and also the kids, the kids put in a lot of time and a lot of determination to make it happen. It took
17 all of us working together and we did a lot of field trips. I learned a lot, we all learned tons. That was one of
18 the highlights I think of getting ready to go. But the chosen watershed was the Walker Basin Watershed and
19 that's where my family gets our water for agriculture and that was very interesting learning about my dad
20 and my brothers and kind of their perspective, along with other perspectives. It really opened my eyes to a
21 lot of things in putting it together. And it's as you know very, very complicated and in our drought situation
22 and our desert there's not enough water for all the needs. And the more we studied it, the more I studied it,
23 the more I found out that there's no easy answer and it would take a lot of compromise from a lot of different
24 areas and a lot of work, not just, the conclusion I think, we had to put together a term paper and our term
25 paper was I think about 12 pages long kind of concluded that it would take an awful lot of people coming
26 together and compromising to help save the lake itself. So I found that very, very interesting when we were
27 back at the conference in Edgewater, Maryland at the Smithsonian Environmental Research Center. I was
28 thrilled to do some hands-on research, not so much research, but being on a research vessel with a professor
29 from the University of Maryland and lowered a Secchi disk down into the bay to find out how turbid the
30 water was. I've seen Secchi disks before in movies and photographs and textbooks, but it was the first time I
31 had actually used one and dredging and bringing mud aboard and bringing some fish aboard with nets and
32 kind of sampling different things the way the scientists do was really, really helpful to me as a science
33 educator back at our school. So I really was not only proud that we earned second place, but I got a lot out of
34 the experience of the workshops and the activities they had back there for us. So I just thank you and I really
35 want to thank the Division of Water Quality Planning, Tom Porta and Kathy Sertic and Mary Kay Reidl, they
36 really, really helped us throughout the whole thing. So I'd like to introduce Dylan Conlin for his remarks.

37
38 Dylan Conlin stated overall attending the summit was just a great experience. I learned so much about
39 science that I know I will remember for a long time because it was, just learning so many new things and
40 getting to meet so many new people, it was just really great. One thing I remembered before attending this
41 summit was we took a field trip to Schurz to study the river a little bit and see how the water is kind of
42 getting out of its channel and one thing we noticed was there were lots of beavers down there making dams
43 and they had dammed up so much of the river that it was flooding out and it was evaporating faster and going
44 into the soil faster which is one of the problems. We also learned about all of the tamarisk that's on the river
45 and how it is consuming so much of the water which is also a big problem. So I had never really learned
46 about any of this stuff before and it was just so interesting to just see all these problems and then to see the
47 solutions and then to also see why they can't come to a solution and how difficult it actually is. At the
48 summit it was just really, really fun and I had a great time meeting kids from all across the United States.
49 One thing I remember about that is we got to go up in a cherry-picker. We went up above the trees and we
50 looked out and I had learned before about invasive weeds and plants and thing like that, but I never knew that
51 there was such a thing as invasive trees. So I got to see some of those and it was really an eye-opener on
52 how much information there is out there and how little I know of it. And so, but overall it was just a great
53 experience and I'm really glad I got to go. We also were able to attend the Smithsonian museum. One of my

1 favorites, I remember attending this with Jim, was the Aaron Space Museum and there was a hands-on
2 exhibit that was really neat. It was a lot of physics that was involved and it was just really interesting. So
3 thank you very much. I'm just really glad I got to attend the summit. And now I'd like to introduce Jim
4 Wilburger.
5
6 Vice Chairman Coyner asked should we ask Mr. Crawforth to get his beavers out of the Walker River? Is
7 that an issue?
8
9 Dylan Conlin answered well down by Schurz I think there's an overpopulation of them.
10
11 Commissioner Ricci stated you said something about how much science was out there and how little you
12 knew. Well I'll tell you what, as you get older, it doesn't get any better.
13
14 Vice Chairman Coyner asked are you a Millennium scholar at UNR?
15
16 Dylan Conlin answered yes.
17
18 Vice Chairman Coyner asked do you have other scholarships that you would be . . .
19
20 Dylan Conlin answered yes. I think I have about scholarships, so it's pretty much paid for for four years for
21 me.
22
23 Vice Chairman Coyner stated wonderful. And biochemistry, correct?
24
25 Dylan Conlin answered yes.
26
27 Vice Chairman Coyner asked how did you raise the money to go to Washington? Who sponsored you or
28 how did you get the money? Sue found out. Sue got the money.
29
30 Dylan Conlin answered America's Clean Water Foundation.
31
32 Vice Chairman Coyner stated okay, great, wonderful.
33
34 Dylan Conlin asked are there any other questions?
35
36 Vice Chairman Coyner thanked him.
37
38 Jim Wilburger stated the whole conference, like Dylan was saying, was a whole lot of fun to be up there and
39 to really learn about how lake water systems work period. It was like me living in Las Vegas I couldn't
40 really be as involved with the project as everybody else was, but I got to do the radio spot on the Lake Mead
41 watershed. It was just really, really neat getting to see just how the water system worked in my city and see
42 all the maps of it and like really learn about how serious all the drought has been for the entire Colorado
43 River system. I really liked going to the aquarium in Baltimore. It was really cool to see all kinds of neat
44 fish that they have there especially being here we don't have many aquariums around so it was cool to get to
45 see some of that. It was really fun doing all the field trips with the Smithsonian Research Center because we
46 got to go in there, at one point on canoes, on kayaks into the marshes and just to paddle around in there and
47 see what was going on with all of the wildlife was really neat. It was really interesting. So I think overall I
48 really learned a whole lot more and I'm always telling my friends not to spray the hose all over the place and
49 waste all the water because we don't have much as it is. It was really fun. Thank you for the opportunity,
50 especially I've never been farther east than like Colorado before then so it was really neat to see the east
51 coast of the United States and see all kinds of students from around the country. So I guess I'll introduce
52 Ann.
53

1 Vice Chairman Coyner asked how did a performing artist in piano get an interest in water quality?

2
3 Jim Wilburger answered I've always liked science and I plan to do science in college and piano is kind of a
4 hobby. I'm not going to really study music when I go to college, but it'll still be something on the side. I
5 play for my church, I'm really involved with that and really enjoy doing it.

6
7 Vice Chairman Coyner asked have you decided what your major at UNLV will be?

8
9 Jim Wilburger answered I'm not sure because I like so many different sciences. I don't know if I want to do
10 physics or chemistry or biology or what.

11
12 Vice Chairman Coyner stated try geology. It's like the word "plastics." Geology. Old joke. And a
13 Millennium scholarship for you as well?

14
15 Jim Wilburger answered I still have another year so far at the Las Vegas Academy.

16
17 Vice Chairman Coyner asked so you're just a junior?

18
19 Jim Wilburger answered yes. I'm only a senior now, so. . . but yeah we'll see. I don't know where I'll end
20 up going but . . .

21
22 Vice Chairman Coyner stated thank you very much.

23
24 Jim Wilburger stated thank you.

25
26 Ann Larquier introduced herself. She stated I'm going to be a senior at Douglas High School in Minden in
27 the fall. I'm just very thankful for this opportunity to be able to attend the National Youth Watershed
28 Summit in Washington, D.C. and to be able to work with students from all over Nevada. As I learned when
29 we got there from most states, almost all the states, most of the students are all from one high school. So I
30 think Nevada took a more professional stance, like we had to do applications to get chosen for this and each
31 one of us was from a different part of the State. So I think that gave us a better overall experience being able
32 to work from different perspectives and different areas. I was really appreciative of that. I also really
33 enjoyed the field trips and everything, going out to Walker Lake and being able to see hands-on what was
34 happening and seeing how the lake level has dropped so much over the past 100 years. And getting to know
35 these other wonderful students and teachers and everyone who helped us out. That was just a great
36 experience. This was my second time going to Washington, D.C. And it's just so beautiful back there. It's
37 so much greener. Well I guess everything is greener compared to Nevada. It was also really flat so I enjoyed
38 going up in the cherry picker to be able to see the vistas because you're just surrounded by trees all the time.
39 You never get to see the views. There's no mountains, so yeah, I was also thankful because we didn't learn
40 just about water we learned about all the different aspects of the environment and different ecosystems and
41 habitats and things like that.

42
43 And when we went into Washington, D.C. we go to hear speeches from the head of the EPA and other
44 environmental government associations. So that was really interesting and it was a great opportunity because
45 they're really busy people and they took their time out of their schedules to come and speak to these students
46 from across the nation. So I really enjoyed getting to know the people from different parts of the country and
47 staying in cabins with them, and that was just really fun. And when we were at the Smithsonian
48 Environmental Research Center we got to go out in research boats and canoes and we did the canopy thing
49 and we got to learn about GPS systems on the computers and how those are used in environmental research
50 and mapping. So that was really interesting. And learning more about just the ocean part of things because
51 we live where we aren't bordering the ocean and so that was interesting to me. I was always kind of
52 interested in the environment, but this has really thrust me head-on. I've been a lot more involved with
53 environmental issues since I have come back. I was just recently a counselor at the Great Basin Outdoor

1 School for Elementary students in Lake Tahoe. And so I got to teach and share some of my knowledge with
2 them and see how they learn and so that really was a thrill for me.

3
4 I also took a lobbying workshop put on by Environmental Leadership. Having the opportunity to and being
5 fortunate enough to live right by Carson City and the capital, I've been able to witness how the senate and
6 the legislature works and the different environmental issues that are coming up in the sessions. Since I am
7 attending Girl's State right now we're going to visit the legislature on Friday, even though they're not in
8 session. We are setting up our own mock legislature. We had to write our own pieces of bills or legislature
9 and I did one on Walker Lake and we'll see if it passes. I don't know. We had to run to see who was going
10 to be in the Senate and in the Assembly. I'm really looking forward to that experience. I enjoyed learning
11 about the social, economic and political aspects of Walker Lake and the Walker River basin and how it
12 affects everyone from the beginning of the rivers all the way down to the lake and how the cities and the
13 farmers and the water district and how every individual person is affected by what's happening. I'm just
14 really thankful for this opportunity and thank you for giving us the time to speak with you today.

15
16 Commissioner Crawford asked did you come up with some solutions for the Walker River? All of us can't.
17 Maybe you'd do a better job at the legislature, get us some tax bills passed.

18
19 Ann Larquier answered not particularly, but like in the resolution I wrote in the bill I wrote for Girl's State, I
20 don't know if it is even feasible but I remember they were talking about how there was a farm bill passed
21 through the United States legislature and somehow Walker Lake was eligible to receive funding under that.
22 So I proposed using the funding to buy water rights from some of the farmers that were willing to sell their
23 water rights because I know there are some, but the peer pressure from the other farmers is so large that
24 they're kind of threatened and scared to do that. So, yeah, I don't know if it would be a serious option
25 because I was just trying to think of solutions for this mock trial thing. But that's how I composed my bills.

26
27 Commissioner Henderson stated I was just wondering the components of the competition. There was a
28 display or an exhibit that you prepared?

29
30 Ann Larquier stated yes. Actually when we were doing the project and we took it back to Washington, D.C.
31 we did not know it was going to be a competition so we just tried our hardest because we wanted to represent
32 Nevada well. So we did a display board and it's pretty big. I'm really sorry it's not here for you today, but
33 we had quotes from different water users and we had a map of the watershed and we took pictures
34 throughout our trips showing different areas and we had graphs and such showing the salinity levels and the
35 level of the lake. We also did a report which is just more in-depth of the display board telling the geography
36 of the watershed and the possible problems and solutions and other things that were involved with it. You
37 could also do a 30 second radio spot which we allowed Jim to do on the Lake Mead watershed because we
38 didn't want him to feel left out. I think they really brought us all together.

39
40 Vice Chairman Coyner asked are you a senior as well?

41
42 Ann Larquier answered I will be a senior in the fall. I'm planning right now on attending Southern Oregon
43 University in Ashland and I want to major in some type of environmental sciences, but I'm not exactly sure
44 right now.

45
46 Vice Chairman Coyner stated you could cross over and be in drama too because Ashland is a big drama spot,
47 right? It's very well known?

48
49 Ann Larquier stated yes, that's what everyone says when I say that, but I don't know.

50
51 Vice Chairman Coyner stated well being involved in the environment and lobbying you may appear before
52 this Commission someday so we'll look forward to that.

1 Ann Larquier stated yes, hopefully.
2
3 Vice Chairman Coyner stated congratulations. Very nicely done.
4
5 Ann Larquier stated thank you.
6
7 Vice Chairman Coyner stated Sue and Kathy thank you very much. Sue let me remind you that the Nevada's
8 Teacher's Education Workshop in Minerals in July 22nd and UNR sponsored by the Nevada Mining
9 Association and the Nevada Division of Minerals. Always looking for science teachers to come to that. It's
10 a wonderful time.
11
12 Sue Moreda stated those opportunities are very nice actually.
13
14 Vice Chairman Coyner stated alright. Hope to see you there.
15
16 Sue Moreda stated I've done chocolate chip mining with cookies. (inaudible)
17
18 Commissioner Ricci asked Kathy Sertic will we ever be able to see that poster or the display? Where is it?
19
20 Kathy Sertic answered it's in our office right now. Maybe we could have it set up for (inaudible).
21
22 Vice Chairman Coyner stated that would be great.
23
24 Sue Moreda explained there was a mix up in boxes. The wrong box came this morning. So, we're sorry.
25
26 Vice Chairman Coyner stated well again, thank you both for coming. Send our regards to Greg and
27 congratulate him too and to the three of you congratulations. Good luck with your futures. You're very
28 bright and we're very proud of you. Thank you.
29
30 Vice Chairman Coyner moved to **Agenda Item V. Regulatory Petitions, Petition 2003-03.**
31
32 **(Petition 2003-03** is proposed temporary amendments to NAC 445B.001 to 445B.3497, the air pollution
33 control regulations. The regulation amends NAC 445B.281 to increase and standardize the fines in the
34 schedule for minor violations, including fugitive dust, open burning, incinerator burning, odors, excess
35 emissions, testing and sampling reporting, monitoring system reporting and change of location. First offense
36 is increased to \$250, second offense to \$500 and third offense to \$750, except for fugitive dust emissions
37 where the fine is proposed be \$1,000 for the third offense.)
38
39 Mike Elges introduced himself as chief of the Bureau of Air Pollution Control. He stated I'm here this
40 morning to present a summary of the proposed changes to the air quality regulations contained in NAC
41 445B.281. This regulation establishes classification of the violations and administrative fines. The change
42 being proposed today is an increase in the schedule of fines for minor violations. The current fines for minor
43 violations have not been adjusted since October of 1987. We're proposing to amend the regulations such
44 that the first offense for each minor violation would be subject to a \$250 fine. The second offense would be
45 a \$500, and the third offense \$750. The only exception is in the third offense for fugitive dust or a fugitive
46 dust violation we're proposing that that fine be a \$1,000 fine. We believe that it's necessary to increase these
47 fines as we're finding that they're simply not high enough to be a viable deterrent. In many cases it's simply
48 cheaper to violate and pay the fine instead of making appropriate changes to ensure that a violation does not
49 occur. We've seen several situations where violators don't begin to take appropriate corrective actions and
50 pursue or assuming that the violation, we either won't catch them or that the cost of the fine is simply pay
51 rather than to comply with the regulations. This has been particularly evident with many of the fugitive dust
52 violations that we've processed within the last couple of years. And that's the primary reason we're
53 proposing to see the fugitive dust violation, the third offense be at the \$1,000 level.

1
2 The agency held workshops in Carson City and Las Vegas earlier this month to solicit comments and input to
3 the proposed amendments. We didn't receive any negative comments, but we did receive some input
4 suggesting that the penalties may not be high enough even at the proposed levels to be a complete deterrent.
5 We don't believe that the fines as they're proposed are such that they would be a complete deterrent to all
6 violations, but at the same time we're considering some of the smaller businesses that we see and some of the
7 fines that we've levied in the past and the difficulty that some of these smaller facilities have in overall
8 payment of these penalties. So we've tried to strike a balance between those two. So we believe what we've
9 proposed is a good gap filling measure, if you will, for the cross-section of industry that we work with.

10
11 Commissioner Reavis asked you either don't fine them or you have to fine them this amount? It's not up to
12 that amount? Can you think of any situations where this would make it so inflexible that it would give you
13 problems with the penalty?

14
15 Mike Elges answered I can't. In fact, a discussion was held during our workshops about the practice of these
16 penalties or the fines that are assessed and I cannot think of a situation where we would be captured and
17 forced into a position where we couldn't work through a particular problem through the minor violation
18 scheme the way it has been established.

19
20 Commissioner Doppe asked would you clarify that the fugitive dust, there aren't any other fugitive dust
21 violations, you're right. It happens to fall into minor violation?

22
23 Mike Elges answered right. The way that the structure is set up, basically if a source is penalized for a
24 fugitive dust violation they can have up to three violations in a 60 month window, the fourth violation rolls
25 into the major violation category. What we've seen more recently is we're just not getting any response at
26 the lower levels and we certainly start to get folks' attention when we get into the major category and start
27 talking about some fairly substantial penalties. Unfortunately, at that point in time we really feel like we've
28 kind of missed the opportunity to work with the facility owners or operators and try to bring them into
29 compliance.

30
31 Commissioner Doppe stated I would just make a comment for your behalf and for the Commission's. In
32 Clark County these fees are approximately 10 times higher than what you're showing here and it does make
33 a difference. When you get \$10,000 for a fine you start to pay attention and the construction industry is very,
34 very aware of those in Clark County and I can well see where equipment operators or the small, the \$250 or
35 \$500 they don't notice that. At \$2,000 and \$5,000 and \$10,000 they start to notice and when it goes back to
36 the owner of the ground who is ultimately responsible, there are some serious ramifications to fines in that
37 magnitude. I would tend to agree with the comments you got in the Las Vegas workshop and I can see
38 where they're coming from down there that you're numbers are light yet.

39
40 Mike Elges stated understanding that and I agree that it's difficult to strike a balance with certainly the issues
41 that Clark County is dealing with and the particular problems in Clark County. At the same time we've
42 experienced quite a bit of growth in the Pahrump Valley area and quite frankly there's a lot of smaller
43 businesses down there that if we had penalties that were quarters of magnitude higher than even what we're
44 proposing today, we're quite confident that we'd be in a situation of potentially putting some of those
45 businesses out of business. I don't believe that that's appropriate for these types of penalties and associated
46 fines. So again it's difficult to strike a balance for the entire State in particular when you're dealing with the
47 Clark County issues. But I believe what we've proposed here is appropriate for the jurisdictional area that
48 we have.

49
50 Commissioner Doppe stated it might be a good idea just to monitor and see if you get to the desired result
51 with these numbers.

1 Mike Elges stated obviously that would be appropriate. Again, when we researched this and looked back
2 that these hadn't been changed since '87, that was quite a bit of an eye-opener for myself. So we'll certainly
3 be watching that.

4
5 Commissioner Henderson asked are the violations that you've experienced in this area, how many of them
6 relate to agricultural operations?

7
8 Mike Yamada introduced himself as the supervisor of the Compliance and Enforcement branch for the
9 Bureau of Air Pollution Control. He stated we haven't had any with Ag but we've sent letters out informing
10 people what the regulations are. So far there hasn't been any real issue with Ag. I think Ag is being handled
11 through the Farm Bureau and they seem to be doing a good job with that. So, we're having a problem right
12 now where people buy a 5 acre lot and raise horses. That's (inaudible) right now.

13
14 Commissioner Henderson stated so I take it by your response that there's mechanisms in place, the Farm
15 Bureau is engaged and NRCS and generally where you're having problems with an agricultural operation the
16 operator is interested in working with you and taking care of the issue.

17
18 Mike Yamada stated yes, we will refer it over to the Farm Bureau and tell them that you should be talking to
19 these people, how to implement this practical methods for dust control.

20
21 Vice Chairman Coyner stated I would remind the Commission again where the money from the fines goes,
22 Mike please?

23
24 Mike Elges explained any fine money that's taken in by the agency for air pollution control is forwarded on
25 to the school district in the county that the violation occurred in.

26
27 Vice Chairman Coyner asked and then will this have any effect on the matrix? In other words, you build the
28 base up higher now, will it magnify itself suddenly when you go through the matrix of the penalty? Does
29 that apply to the minor violations first of all?

30
31 Mike Elges answered it does not. The penalty matrix that we put together is for the major violations side.
32 That is something, just as a bit of information, that we are considering reworking. Mr. Yamada has spent
33 quite a bit of time with that over the last year and a half or so and at some point we would likely bring that
34 before the Commission to explain the changes that we're looking to make. But as far as this petition and
35 these changes, a separate issue.

36
37 **Commissioner Crawford motioned for adoption of Petition 2003-03.**

38
39 **Commissioner Reavis seconded the motion.**

40
41 **Vice Chairman Coyner called for a discussion of the petition. He asked DAG Frey if he was to do
42 public comment before the vote.**

43
44 **DAG Frey answered yes.**

45
46 **Vice Chairman Coyner called for public comment. Seeing none he declared the public comment
47 portion closed and called for a vote.**

48
49 **The motion carried unanimously.**

1 Vice Chairman Coyner moved to **Agenda Item V. Regulatory Petitions, Petition 2003-04.**

2
3 **(Petition 2003-04** is proposed temporary amendments to NAC 445B.001 to 445B.3497, the air pollution
4 control regulations. The proposed regulation amendments include only minor clarifications, technical
5 corrections and the removal of regulations that are no longer applicable. These are necessary to update and
6 correct the NAC. They will also bring Nevada's program more into alignment with the Applicable State
7 Implementation Plan.)

8
9 Mike Elges stated this morning I'm going to provide a summary of the proposed changes to several of the air
10 quality regulations contained in NAC 445B.001 to 3497. In the way of background the agency has been
11 working to bring the State air quality plan or the SIP up to date with the current Nevada Administrative
12 Code. This has not been done for many, many years and has been quite an effort on both ours and EPA's
13 part. A great deal of time has been spent working with the EPA to see that the SIP and the NAC be
14 consistent documents. In doing so, the agency has determined that some of the NAC provisions must be
15 amended or revised to meet this overall objective. In some cases we're actually proposing the removal of
16 some provisions and I'll discuss those in a little bit more detail in a second.

17
18 First I need to walk through a correction under Section 1. This regulation should read, Section 1. NAC
19 445B.2202, not 2204. There's also a reference to NAC 445B.2202 just under Section 1 I believe in your
20 copy. That's not supposed to be there at all. So to clarify we're proposing to change NAC 445B.2202, not
21 2204.

22
23 Under Section 1 we're proposing to remove Subsection 4, which is a provision that allowed a thermit batch
24 process to exceed the opacity provisions for a period of no more than 60 minutes. When Nevada requested
25 to have this regulation adopted into the effective SIP the request was specifically denied by EPA. This
26 happened many years ago. Subsequently, there were several years of work with the facility, controls were
27 added to the thermit process and the process today is complying with the visible emission provisions
28 contained in 2207. Since the provision was specifically disapproved by EPA and since the system is
29 complying with the visible emissions provisions, there's no further need for this and we're proposing to
30 remove it at this time. I think that's all of the changes that we were proposing in Section 1.

31
32 In Section 2 we're proposing to remove the per hour reference at the end of this regulation. In November of
33 1979 the agency proposed this regulation to the Environmental Commission. At that time it was Article
34 8.2.1.3. At that time the per hour reference was included in the proposed regulation. Testimony was
35 provided by the Nevada Power Company and they identified that the per hour reference was a discrepancy in
36 the rule. They went on to request that that be omitted from the regulation in their testimony. The regulation
37 was adopted by the Commission without the reference and that regulation became effective on January 1,
38 1983. Somewhere between 1980 and 1982 the per hour reference came back into the regulation. We
39 researched all the records of any proposed changes and any of the Commission minutes that we had and
40 could not find any reference or any reason that this regulation would have been reopened or re-reviewed in
41 that time frame. So we believe that the regulation was inadvertently amended during the codification process
42 and that the term either wasn't removed or somehow was slid back in in the transition. So we're proposing
43 to correct that hopefully once and for all and get that reference out of this regulation today.

44
45 Under Section 3 we're simply proposing to update the phone number in this section.

46
47 In Sections 4, 5 and 6 we're proposing to provide clarifying language at the end of each of these sections.
48 The language is intended to make it clear that these provisions do not somehow interfere or otherwise
49 override specific criteria established in federal regulations. As part of the review of these provisions with
50 EPA there was concern raised regarding the apparent discretion provided to the Director in these provisions
51 and that that discretion appeared to conflict with the general enforceability requirements contained in the
52 Clean Air Act. After quite a bit of discussion with EPA we believe that the proposed language will uncouple

1 any concerns that they have regarding these regulations conflicting with Clean Air Act provisions and federal
2 oversight.

3
4 Lastly, we're proposing to remove NAC 445B.22053. This regulation established specific sulfur emissions
5 limitations on the No. 1 kiln at the Basic Refractories Gas facility. This unit has not been operational for
6 several years. Much of the equipment has been cannibalized to keep other units operating at the plant. The
7 unit's not likely to ever operate again; however, should the company propose to make the unit operational it
8 would have to go through a significant amount of reconstruction and that would effectively trigger more
9 stringent requirements than this regulation has in place right now. So, the provision is really no longer
10 necessary and we would like to remove it, again to pull it from the Administrative Code and to work along
11 with building this consistency into our SIP as well.

12
13 Workshops for the proposed changes that I've discussed were held in Carson City and in Las Vegas. We
14 received no comment, really regarding these regulations whatsoever. With that I'd be happy to answer any
15 questions that you may have.

16
17 Commissioner Johnson stated in Section 1, and it's not in your proposed change, but I would like for you to
18 comment on the new Subsection 5 and this is I think in particular reference to some past Commission hearing
19 on the Mohave Plant and I think the general feeling of the Commission that there was significant impact
20 from this soot blowing or that sort of thing. Has there been any consideration of changing the 180 minutes in
21 the 24 hour period?

22
23 Mike Elges stated I think the direct answer to your question is yes. This has been a stickler in discussions
24 that we've had in changes or updating components of our effective SIP. Beyond that I can't tell you that
25 we've come to any agreement or determination at this point in time as to how best to address that particular
26 issue. I think what I could leave you with today is that it's likely that at some future point we'll be in front of
27 this Commission discussing a change to this particular component of this regulation.

28
29 Commissioner Johnson asked so this would be a subject of future workshops?

30
31 Mike Elges answered absolutely.

32
33 Commissioner Reavis stated you probably answered the question. You said you had no comments on this
34 Basic Refractories or Kennametal, neither one had comments on this?

35
36 Mike Elges stated we contacted obviously both of the facilities before we wanted to make these changes and
37 we actually had quite a bit of dialogue with the Basic Refractories folks because what we didn't want to do is
38 obviously move forward with proposing the removal of a regulation should the unit likely come back on line.
39 We felt that that was going to become a very complicated issue. From my perspective, I'm very confident
40 that as far as both the facilities are concerned, these regulations really have no effect whatsoever and other
41 regulations that are in place certainly supercede and are more stringent.

42
43 Commissioner Crawford asked you're comfortable within Section 2 that it provides the appropriate
44 regulation for it if you take out the per hour so that the lbs. per Btu's could be over any period of time?

45
46 Mike Elges answered at this point in time you know we're talking late '70's early '80's when this regulation
47 was brought into the Administrative Code. At that point in time the air quality program was experiencing
48 oversight by federal EPA as far as PSD permits were concerned. Federal EPA was working towards the
49 issuance of a PSD permit for the Nevada Power facilities, the different units, Units 1 through 4 as a whole.
50 In doing so, they established specific conditions within that permit that had to be adopted into the Nevada
51 Administrative Code as part of the function at that time. There was not a clear understanding that the State's
52 regulations for the program were sufficient to develop conditions within permits. So many of these source-
53 specific type regulations were being adopted. In reviewing the history and reviewing the permit that was

1 issued, which quite frankly is still in effect today, what we were able to determine was there's a specific
2 subsection within that permit that specifies a 3 hour averaging period for the lb. per million Btu value. So
3 that component was never entered into the regulation. It is in effect and has been in effect at the facility
4 since I believe early in 1980 when that permit was issued. It's still in effect today and will be pulled into the
5 facility's Title V permit. So the averaging period is basically taken care of through subsequent permits
6 issued by EPA, pulled together by Nevada in their Title V program. But this stand-alone portion of the
7 standard or limitation that was set was set I believe correctly initially but not codified correctly and that
8 gummed up the works for this per hour definition if you will. So to answer your question, there is not an
9 infinite time for averaging. It's a 3 hour average, but it's specified elsewhere outside of regulation.

10
11 Vice Chairman Coyner asked why do we need this type of thing?

12
13 Commissioner Crawford stated it doesn't have the time frames (inaudible).

14
15 Mike Elges stated I think I understand the paradox here and the question being, "Well why do you need this
16 regulation at all?" Part of our difficulty here in working through the SIP program is if we don't have State
17 regulations that are consistent with the SIP it's viewed as a SIP relaxation. So the program as a whole does
18 not match the minimum criteria that EPA says is appropriate to maintain or attain the standards in the State.
19 So it's a cumbersome process, but if we were to strike this regulation as a whole not be able to enforce it at
20 the State level, EPA would view that as a relaxation of the SIP as a whole and that would have a potential
21 dramatic effect on the overall plan for the State of Nevada. Essentially what they're saying is we have to
22 retain the standard that was set many years ago unless we can definitively argue and successfully
23 demonstrate that by removing this and potentially other source-specific regulations, that it doesn't alter our
24 ability to attain and maintain the standards throughout the State.

25
26 Commissioner Crawford asked in Section 3(4) do we really need to put phone numbers in regulations? I
27 know it's always been there, but . . .

28
29 Vice Chairman Coyner stated I have no phone numbers in my regulations. Agriculture do you have any?

30
31 Commissioner Henderson answered not to my knowledge, no.

32
33 Vice Chairman Coyner asked or water engineer?

34
35 Commissioner Ricci answered I don't think I do.

36
37 Vice Chairman Coyner stated I don't have any. You guys are the odd-man out here. There may be a reason
38 because of the importance of this particular thing.

39
40 Allen Biaggi stated you'll find throughout the Division's regulations that phone numbers are included. Some
41 other examples are our spill phone line and other things related to emergency response. We feel that it is an
42 appropriate thing to do to give the regulated community the information they need in order to fulfill their
43 regulatory obligations and it's been a long-standing tradition within the agency. As you know, periodically
44 we come forward to address these phone numbers. We'll be doing the same thing for the spill lines because
45 we have a new 800 number for the State of Nevada. But they've been in there. We feel that they are
46 important to inform our regulated community and we would ask that they be retained.

47
48 Commissioner Ricci asked is this a recording that would be after hours or is there an actual person that's
49 going to answer the phone?

50
51 Mike Elges answered this is actually our front office number. There would not be a recording after hours.
52 We have actually worked with our regulated community over the last several years to develop basically a fax
53 in reporting provision as well. Unfortunately, not everybody has the technology to be able to do that and so

1 we still rely very heavily on sources being able to notify us of upsets or malfunctions of excess emissions by
2 phone and obviously this is the preferred path for us for that contact.

3
4 Commissioner Ricci stated the reason I asked that is if there's nobody answering it, if it comes at 6:00 on
5 Friday night, it's another 48, 50, 60 hours before and it surely doesn't fall within that 24 hour period. I was
6 just wondering how, but you say that that's taken care of by a fax? Okay.

7
8 Allen Biaggi stated our spill line, which ultimately this may be incorporated into, is manned 24 hours a day,
9 7 days a week, 365 days a year and there is a live person that you'll get when calls are made to that line.

10
11 Vice Chairman Coyner called for further questions. There were none. He called for public comment.
12 Seeing none he declared the public comment period closed and called for a motion.

13
14 **Commissioner Reavis moved to adopt Petition 2003-04.**

15
16 **Commissioner Ricci seconded the motion.**

17
18 **Commissioner Johnson stated I believe there was an amendment proposed. It's simply a change in the**
19 **number in Section 1.**

20
21 **Vice Chairman Coyner stated noting the correction in Section 1 the first line from 2204 to 2202.**

22
23 **Commissioner Johnson stated and deleting the NAC.**

24
25 **Commissioner Reavis stated NAC 445B, as amended then.**

26
27 **Vice Chairman Coyner asked do we have understanding on that then? Those two things are changed?**

28
29 **Commissioner Johnson stated on Section 2, some additional comment on removing the per hour. You**
30 **say that you have an operating procedure that requires or mandates a 3 hour averaging time period.**
31 **Is that part of a federal requirement or could we perceive this relaxation from the 1 hour requirement**
32 **to a 3 hour? Or does that functionally effect how a facility is operated?**

33
34 **Mike Elges stated again to clarify, the facility is held by a federal permit to a 3 hour average. If there's**
35 **considerable concern about the averaging period not being specified in this regulation, we certainly**
36 **could propose to place a 3 hour averaging here. I don't believe it's an issue because the permit that's**
37 **in place establishes the averaging period and was done so many, many years ago. I don't believe there**
38 **was ever a relaxation that took place because the regulation appears to have been adopted correctly to**
39 **begin with. There was simply an error made in the codification process.**

40
41 **Commissioner Johnson stated but the flexibility offered in a 3 hour average is greater than a 1 hour**
42 **average.**

43
44 **Mike Elges stated I agree. But I don't believe a 1 hour standard was ever established.**

45
46 **Vice Chairman Coyner called for further discussion. There was none. He called for a vote.**

47
48 **The motion carried unanimously.**

1 Vice Chairman Coyner noted that **Agenda Item V. Regulatory Petitions, Petition 2003-05** was withdrawn.
2 He then moved to **Agenda Item VI. Non Regulatory Petitions.**
3

4 (The Nevada Environmental Commission pursuant to NAC 444.8476 received a request on January 16, 2003
5 from **Day & Zimmerman Hawthorne Corporation**, the operations contractor for the Hawthorne Army
6 Depot, for renewal of a **variance** application from NAC 444.8456(1)(d). This variance is in regards to the
7 proposed plasma ordnance demilitarization system. The variance application concerns the proximity of
8 groundwater beneath the proposed plasma ordnance demilitarization system. NAC 444.847 through
9 444.8482 provides for the Environmental Commission to act upon variance requests. The renewal variance
10 application has been reviewed by the Nevada Division of Environmental Protection. NAC 444.8478
11 provides for a thirty-day public notice and comment period.)
12

13 Krag Filius introduced himself as representing the U.S. Army project team that has been tasked with the
14 installation of the plasma (inaudible) demilitarization system at the Hawthorne Army Depot. He stated what
15 you have before you this morning is a request for renewal of a groundwater variance that was issued in 1998.
16 The variance was requested at that time as part of the Army's effort to obtain a suitable installation site and
17 receive the appropriate authorizations to proceed with installation and construction. As the project stands
18 now, the hardware process is largely installed. We are requesting the renewal of this variance at this time to
19 allow us to proceed with finalization of the other permitting activities and ultimately the compliance and
20 demonstration testing later in this calendar year. I guess with the application, or the summary memo that you
21 have before you clearly lays out the request and the issues associated with it.
22

23 Vice Chairman Coyner stated Krag makes reference to this memorandum of May 5, 2003 sent to Allen
24 through Verne Rosse and Doug Zimmerman and from the RCRA people. I'll give you a moment to take a
25 look at it. Do we have any questions from the Commission with regards to the variance for Krag?
26

27 Commissioner Villaflor asked on the plasma generator, what is the process involved in that plasma generator
28 and what type of materials are used in the incineration and what materials are incinerated and the by-
29 products?
30

31 Krag Filius answered the process itself is very analogous to a traditional incinerator. The key difference here
32 is that we are using a plasma arc which is a sustained electrical discharge as the heat source at the front end
33 as opposed to a fossil fuel. It has two primary advantages. One is that the mass flows coming out of the
34 process, the gas mass flows are significantly lower which allows us to put on a more elaborate off-gas and
35 pollution abatement system on the back end. The other key difference is it's a higher temperature process
36 and so inorganic materials associated with the waste stream, particularly the heavy metals, are melted and
37 oxidized and incorporated into a slag matrix that once cooled is a glassy ceramic very durable in terms of
38 groundwater leaching of these metals back in. The by-products, waste products off of this process are the
39 slag material. There is also a pollution abatement system. We're currently using a combination of wet gas
40 scrubbing and dry gas scrubbing so volatile metals and acid gasses are scrubbed with a wet scrubber which
41 produces a scrubber liquid that will be treated prior to discharge and there's also a secondary particulate
42 scrubbing system that will generate a relatively minor amount of bag house particulate.
43

44 Commissioner Villaflor asked so basically all the solid particles are disintegrated? But now you will still
45 have some particulate that you're going to discharge where?
46

47 Krag Filius asked the bag house particulates? They're a relatively small percentage of total waste. They will
48 be contained and handled appropriate for the haz-waste if they qualify has haz-waste we would expect them
49 to contain some carry-over of the heavy metals, anything that carries through the system or is filtered at the
50 back end.
51

52 Commissioner Villaflor asked you're not just dumping this in the ground or anything like that?
53

1 Krag Filius answered no sir. Those will be, that's an identified waste under the Day & Zimmerman waste
2 management plan and it will be tracked accordingly.

3
4 Commissioner Reavis stated you have groundwater monitoring wells in the vicinity. What do you monitor?

5
6 Mark Philliber introduced himself as being with the Day & Zimmerman Hawthorne Corporation. He stated
7 we'll have an up-gradient and down gradient monitoring well and those parameters are being looked at by
8 the Bureau of Water Pollution Control right now and they will actually set the parameters. What they'll
9 probably be looking for are TDS, pH, conductivity as well as metals and any other substances they might
10 have of concern. We currently have an NPDES permit for our WADF area which is about 1,500 feet
11 northwest of this building and what we sample for there under that NPDES permit again is total dissolved
12 solids, conductivity, nitrates and parameters pH, I believe is another parameter there. But the Bureau of
13 Water Pollution Control will also issue a NPDES permit for this and we have all of our data before them as
14 well as the evaporation pond design and so forth and they are currently in that review status.

15
16 Commissioner Reavis asked are you doing monitoring of background?

17
18 Mark Philliber answered we will as part of this permit. We will have one up-gradient monitoring well and
19 then one down-gradient monitoring well so therefore we'll be able to make that comparison between the two.
20 The up-gradient monitoring well should be uncontaminated and therefore that will serve as our background
21 well.

22
23 Commissioner Villaflor asked in the past 5 years that you've had this variance has there been any problem?

24
25 Mark Philliber answered the unit hasn't been operational during that 5 years. It's been in the process of
26 being constructed and we're close to completing construction. They're currently looking at startup in August
27 based on the approvals and so forth as far as our shake down and then we'll go into the further operations
28 after that. But it's almost completed construction right now.

29
30 Commissioner Henderson asked how long would this variance, if approved, be in effect before it needs to be
31 renewed again?

32
33 Mark Philliber answered I believe on the original variance that they approved 5 years ago, they set it for a 5
34 year term limit so I suspect it would be up to the Commission to determine at what point it would need to be
35 renewed in the future.

36
37 Vice Chairman Coyner stated we heard from Krag about you're basically taking pyrotechnic munitions in
38 and you've got the particulates from the bag house going out handled as hazardous waste, how about the
39 slag? What's the fate of that?

40
41 Krag Filius answered the slag will be sampled. It generally is quantified as a non hazardous waste. It is
42 subjected to the TCLP leaching procedure. It generally qualifies as a non hazardous.

43
44 Vice Chairman Coyner asked so it'll be disposed of on site?

45
46 Krag Filius answered I believe the plan is Day & Zimmerman has an on-site disposal . . .

47
48 Mark Philliber answered that's right. We do.

49
50 Vice Chairman Coyner asked what kind of quantities are we talking about? A day or a week or . . . ?

51
52 Krag Filius answered it's very dependent on the material you're processing, but 2,000 to 5,000 lbs. a day is
53 what we would envision for the slag material.

1
2 Vice Chairman Coyner stated 2,000 to 5,000 lbs., well that's a ton, that's not even a dump truck load. It's
3 something smaller.
4
5 Krag Filius stated no, it's very small. This molten material will be poured directly into 55 gallon drums and
6 you'll generate those at a rate of up to about 4 to 8 hours, intervals.
7
8 Vice Chairman Coyner asked so it'll be housed into 55 gallon drums and then disposed of in an on-land
9 landfill type of situation on the depot?
10
11 Krag Filius answered disposed of as a drummed material. That's the plan right now.
12
13 Commissioner Ricci stated I believe you said that the testing criteria would be established by the Bureau of
14 Water Quality, Pollution Control, or I can't remember which one.
15
16 Mark Philliber stated for the groundwater, that's correct.
17
18 Commissioner Ricci asked for some of the material in the background and in the monitoring well which is
19 downstream, will the analysis of what some of this stuff that's in the slag, is that going to set some of the
20 criteria for what you're monitoring for in the groundwater?
21
22 Mark Philliber answered that would be up to that bureau to make that determination. But that would be my
23 guess that they would have us monitor for the heavy metals, depending on what type of munitions we'd be
24 processing that would determine what heavy metals are going through the system at that time. But I suspect
25 that in their requirements they will require us to test for that whole gambit of TCLP heavy metals.
26
27 Commissioner Crawford stated I'm not getting it yet here. We're taking ordnance and instead of
28 incinerating it we're going to use a new process here. How in your process would any of this get into the
29 water table?
30
31 Krag Filius explained it's a very minimal risk here. The items that are slated for disposal in this process are
32 small generally hand-held pyrotechnics smokes and flare-type items. They are generally classified as
33 hazardous waste due to their energetic nature. Some of the smokes and dyes have suspect carcinogen
34 compounds in them. Many of the smokes and dyes the Department of Army has a moratorium on open-burn
35 of those types of things for that reason. What this process allows them to do is demilitarize these items
36 whole without the need to try and disassemble or download the energetic and then deal with both the organic
37 and the inorganic. The casings sometimes will have platings, small amounts of metals. Some of the
38 energetics themselves, smoke and dyes have metals of interest, barium, and nickel, some of those types of
39 things. But the risk of groundwater contamination due to the waste stream is pretty minimal because it's a
40 solid, permanently a solid materials.
41
42 Commissioner Crawford asked the remaining slag is containerized and stored on site?
43
44 Krag Filius answered it will be disposed of on site.
45
46 Mark Philliber stated initially when it's containerized in the drum it will be sampled to determine whether or
47 not it has any hazardous characteristics and if it truly determines to be non hazardous then it will be disposed
48 on site. If the sampling indicates that it has some hazardous characteristics, for instance, for some leaking
49 heavy metals then it will be disposed off site as a hazardous waste through our program.
50
51 Commissioner Crawford asked what's the source? Are all these materials coming from Hawthorne?
52

1 Krag Filius answered the initial workload that we're envisioning I believe is at Hawthorne. I believe your
2 permit allows transportation of other materials.

3
4 Mark Philliber answered right. There are a number of these items throughout the Army's inventory
5 throughout the country. But again the Army has set aside I think initial one or two year workload and from
6 that point it depends on the funding available. I think the initial workload comes out of Hawthorne, but it's
7 foreseeable that in the future they would be bringing items from other depots and other bases that can't be
8 processed elsewhere.

9
10 Commissioner Crawford asked like Herlong?

11
12 Mark Philliber answered I'm not sure what Herlong has in their inventory.

13
14 Commissioner Crawford asked are they always going to be in a variance situation? Or is this something that
15 you can ever get a permit for?

16
17 Mark Philliber answered because of proximity of the groundwater and because the variance requires
18 anything closer than 150 feet below, we'll always have to come in for a renewal on this depending on the
19 duration of this renewal.

20
21 Sree Kailash introduced himself as staff engineer with the Bureau of Waste Management and the permit
22 writer for Hawthorne. He stated I want to clarify Mr. Henderson's concerns about the term of the variance.
23 The only reason it has to be renewed is the NAC says that before the permit is renewed the variance has to be
24 renewed. The permit is issued for five years. In this case the RCRA permit expired September 2002 and it's
25 being reviewed for renewal. In other words, it's not been issued yet. So that's the reason the variance has to
26 be renewed. It may be six, eight months from now before we issue the permit, I mean renew the permit. So
27 the variance is always attached to the permit, which is five years. So the next time will be when the renewed
28 permit expires after five years and then the variance has to be renewed.

29
30 Commissioner Henderson asked if there's problems in this permit, if there's contamination occurring it'll be
31 a violation of their, is it a DES permit?

32
33 Sree Kailash answered the only permitted discharge is to their ponds that's being built. They don't have that
34 permit. That's from the Bureau of Water Pollution Control. That permit has not been issued. So that's the
35 only control or discharge from the parts unit.

36
37 Commissioner Henderson asked so it's a hazardous waste permit that's being renewed?

38
39 Sree Kailash answered it's the water pollution control permit, but it's not hazardous waste.

40
41 Allen Biaggi stated let me make a clarification here. This is not an NPDES permit. An NPDES permit would
42 imply a discharge to waters of the United States which would be a surface water. This is an NEV permit,
43 which is a zero discharge permit issued by the State of Nevada pursuant to our groundwater requirements.
44 This permit has a zero discharge standard to it which requires that all of the liquids be maintained in ponds
45 with no discharge to either surface waters or ground waters. So this material that is the result of the pollution
46 control equipment or other liquids is discharged to lined impoundments and from there is managed and
47 evaporated with no discharge to either surface or ground waters.

48
49 Commissioner Henderson stated where I was going with my question is, is you're asking for a variance at
50 this point, but there's a permit that's attached to (inaudible) NEV I believe it is called.

51
52 Sree Kailash stated yes, it's a renewal actually.

1 Commissioner Henderson asked and there'll be monitoring associated with that permit and if there's
2 problems that are detected, it's through that permit that you would stop that action and eliminate it?
3

4 Sree Kailash answered the current variance they have has two conditions attached to that. One is the
5 groundwater monitoring and that's the one that they have the upstream and the downstream monitoring. So
6 those monitoring requirements are in the variance. So even though they are monitoring for, I mean to meet
7 the water pollution control requirements, since it's in the variance, we'll be looking at that too. So if there is
8 a violation then there'll be compliance actions brought.
9

10 Allen Biaggi stated the finding of contaminants in the groundwater would be a violation of State law under
11 State water quality laws. So that would be pursued through the Water Pollution Control program through the
12 issuance of an administrative order and cleanup and abatement actions. The action before you today is a
13 variance to the siting requirements for the operation and construction of this particular facility.
14

15 Commissioner Crawforth asked how long is the variance? The variance would go with the permit? And so
16 it's five years?
17

18 Sree Kailash answered with the permit. I believe the permit is issued for five years from the date it's issued.
19 In other words, the permit has expired in September 2002, so technically the variance has expired too. So
20 that's the reason for renewal.
21

22 Commissioner Reavis asked if there is a violation of the permit and enforcement action is taken, does this
23 affect the variance at all? Is there a provision in the variance that it can be rendered null and void by a
24 violation of the permit?
25

26 DAG Frey answered I have a copy of the variance and it says in the variance that it is ordered that all
27 provisions within the applicable NAC apply and that the variance is revocable for any violation of State or
28 federal law or the variance conditions. So I'm anticipating that if the variance is renewed it would have the
29 same kind of language.
30

31 Commissioner Johnson stated I remember granting this variance. I voted against it originally and not
32 because of the specifics of the application but by the nature of the request and the overall NAC requirements.
33 I guess I would like some comment of why for a zero discharge permit that you require that it be sited with
34 150 foot ground water depth. What's the reason that you have that requirement?
35

36 Allen Biaggi, Division of Environmental Protection, answered the requirement is contained in the RCRA
37 requirements for the State of Nevada for siting a hazardous waste facility or siting a facility that is subject to
38 a RCRA permit. These are generalized requirements that apply to every facility of this type. The issue of
39 the water pollution control permit is a little bit different. That is a non hazardous waste stream that comes
40 out of a facility such as this that is subject to the requirements of that particular body of law. So the
41 Environmental Commission, in establishing the RCRA requirements, wisely recognized that there may be
42 situations that are present where siting criteria may not be able to be met or a facility may not be otherwise
43 able to operate and that variances could be granted for valid reasons and engineering designs put in place that
44 are still protective of public health and the environment and that's why the subject variance is in place today
45 is that it's recognized that this facility is constructed with the appropriate engineering controls for the
46 protection of the groundwater resource. Also, it's an overall environmentally friendlier process to use the
47 POD system rather than open burning, open detonation or other means of ordnance disposal for this type.
48 As you may recall the Division has a policy for Hawthorne and for other DOD facilities that in all
49 circumstances whenever possible the material should be recycled or otherwise beneficially reused. If that's
50 not possible then we ask that it be destroyed or destructed in an environmentally-friendly means where there
51 are pollution control systems available such as PODs or such as WADF only in extreme circumstances where
52 those other alternatives are not available are materials allowed to be open-burned or open-detonated.
53

1 Commissioner Johnson stated you partially answered my concern, but the overall concern is simply on site, if
2 there's a requirement for, there's a significant difference between 20 foot groundwater and immediate
3 response to a discharge than 150 foot. I would think that part of the reason that you have the 150 foot
4 requirement is the response time that you have in case of a release. You can clean up an emission discharge
5 that would potentially infiltrate the water supply at 20 feet that wouldn't be able migrate to 150 foot. In
6 granting the variance you're looking at a site-specific. We really aren't concerned about the process. I think
7 this was a good process at least beneficial for in terms of its alternative. But what about alternative siting of
8 the facility? Is there a requirement that it be here instead of somewhere else?
9

10 Sree Kailash stated the parts' building itself is in like a 12 inch concrete secondary containment, the whole
11 building. So we feel that it's highly unlikely that anything is going to spill out of there other than the control,
12 the discharge to the ponds which is actually non hazardous discharge.
13

14 Commissioner Johnson stated but if there were a malfunction in the fluid system and you had an air
15 discharge that settled outside the site, this is a potentiality, it doesn't have to do with a liquid spill internally,
16 it has to do with an air discharge that subsequently becomes mobilized by precipitation. It seems to me that
17 there was a reason why 150 foot water depth is chosen over a 20 foot water depth.
18

19 Allen Biaggi stated Mr. Johnson I think it's important that you separate out these components because they
20 are being regulated under different laws. The RCRA component of this which deals with the hazardous
21 waste is what this variance is speaking to and it's the operational portion of this facility that is bringing the
22 munitions in, that or the hazardous waste, that are treating it and addressing the hazardous components.
23 That's what is subject to this variance and the 150 foot condition which is the building itself and the
24 treatment components. The water discharges are non hazardous waste are not necessarily subject to the
25 RCRA requirements, nor necessarily are the particulates coming out of the emission control systems, nor
26 necessarily perhaps the slag itself. So the variance that we're talking about today is for that building and that
27 RCRA component and as Sree has pointed out, we believe there are strong engineering controls in place.
28 The other thing that you mentioned is why isn't this sited somewhere or why can't we put it somewhere else?
29 Well, the facility is built. It is located there. I don't know, gentlemen, how much have you spent in
30 construction?
31

32 Mark Philliber answered about \$25 million.
33

34 Allen Biaggi stated so it's about a \$25 million construction opportunity as a result of the variance that was
35 put into place.
36

37 Commissioner Johnson stated now you've hit really the sensitive core of the problem of our issuance of
38 variance. I'm not going to vote against granting this variance at this time, but it becomes almost mandatory
39 that you renew a variance once given and so we have a five year, they've built the facility, you've got
40 taxpayer investment of \$25 million, the process seems to be in my mind flawed to this extent that there's
41 very little choice at this time because you're talking about an extension or a re-granting of the variance after
42 the facility is built. And this is a problem that I see and anticipated in the original granting of the variance,
43 that it becomes problematic upon revisiting a variance that has high capital construction cost in the process.
44 And granted had it been operating over this period we would have operational information to grant the
45 variance or whatever. But the problem is simply a one-time issue. And I guess I've really commented
46 enough about this. I will be voting for it. But I do have concerns as I've expressed repeatedly about
47 variances and how we deal with the issue of (1) readdressing the thing after five years after someone's
48 committed capital to build. Simply why we have the requirements that are restrictive to this sense that we
49 grant a variance on instead of having relocated the facility from the beginning.
50

51 Allen Biaggi stated not to belabor the point Commissioner Johnson. I understand your concern. At the same
52 time, I think I would view it in a different light. I think it's a good idea to revisit the variance at the time of
53 permit renewal to once again double-check to make sure that the decisions that the Commission made 5, 10

1 or 15 years ago are still valid, that the facility is not having problems. If it is having problems, then perhaps
2 there should be some continued discussions of the variance or further requirements placed on the facility to
3 ensure further problems don't occur. So I would view this in a more positive environmentally-friendly light
4 and protective of public health in that this comes up once every five years and allows the Commission to
5 revisit it and hear the status of their variance decisions.

6
7 Sree Kailash stated Commissioner Johnson I'd like to add regarding your concerns about the air pollution, as
8 part of the RCRA process when we first issued the permit there was ecological assessment that was done.
9 It's not under the air permit, but as part of it we have an omnibus provision to ask for any requirements we
10 feel like. So one of the requirements was to do an ecological assessment where they you know they
11 considered the deposition into the soil and the surface water for example Walker Lake and I believe it's
12 about 50 kilometers, about 30 mile radius that the study area is. It was reviewed by EPA Region IX because
13 we don't have any toxicologists on board so it was reviewed by them. Since then it's been revised. The EPA
14 guidance has been reviewed (inaudible) for the ecological assessment. So we asked them to do another
15 before we can renew the permit. They are going to be doing another assessment also.

16
17 Commissioner Villaflor stated just a comment before the Chairman calls for a vote, is that this is not a small
18 project, it is a big project and for lay people like me it would have been very helpful that when somebody
19 presents something like this to present schematics, photos, diagrams, and visual aids for us to envision
20 exactly what you guys are talking about and how it affects the surrounding areas. My comment today is that
21 for a \$25 million project you could have presented us with some slides, with some papers, with some pictures
22 of exactly what the process involves and how it could affect the environment worst-case scenario and I didn't
23 see that today.

24
25 Allen Biaggi stated Mr. Villaflor I will take the blame for that. I think that the Day, Zimmerman Hawthorne
26 staff was willing to come in with that more technical discussion. We felt that because this was a variance
27 renewal that perhaps that wouldn't be necessary and a more generalized presentation would be appropriate.
28 So that was a call made by me and was not either of Sree's or DZB's doing.

29
30 Vice Chairman Coyner asked might we see that in another part of their permit process later? Will they be
31 coming in for permits that we would be reviewing? Okay.

32
33 He called for other questions from the Commission. There were none. He called for public comment. There
34 was none. He called for a motion.

35
36 Commissioner Doppe stated I think it's important to recognize that despite the capital investment by the firm
37 or by the public in this case, it comes to us for review with the authority to turn down the variance if we so
38 decided and that is a power which we have exercised in the past. As you recall, was it Nevada Power,
39 whoever was operating the station down there in Laughlin and we . . .

40
41 Allen Biaggi stated just to set the record, that's Mohave Generating Station and that's Southern California
42 Edison.

43
44 **Commissioner Doppe stated I'm sorry. I stand corrected. But we had initially granted a variance and**
45 **then when they came for renewal I think we, if I have my procedures correct, we decided to deny the**
46 **variance the second time around at a cost to the company, effectively shutting down I think part of**
47 **that operation. But it's a power that comes to us for good purpose, a renewal, a review and I think**
48 **that despite the investment, it is up to us to not feel pressured by that, but to make the decision based**
49 **on the facts as they stand. And having said that, I will support the renewal of the variance because I**
50 **do believe that there exists, for better or for worse, a number of environmental problems that have to**
51 **be solved. This appears to me to be the best way to solve this problem and it appears to me that the**
52 **appropriate safeguards have been designed and now constructed by the company with oversight from**
53 **the Division and based upon that I'm prepared to make a motion to renew the variance.**

1
2 **Commissioner Crawford seconded the motion.**

3
4 **Vice Chairman Coyner asked are there locations on the Hawthorne Army Depot that have**
5 **groundwater in excess of 150 feet? Or are they all in this range, 20 to 60? Since I wasn't here when**
6 **the original variance was approved I can ask that question.**

7
8 **Sree Kailash answered it's pretty much the same, 25 to 30.**

9
10 **Vice Chairman Coyner asked it's 20 to 60 all across there? Even up on the fan to the south there?**

11
12 **Sree Kailash answered yes. It's like 30, 40 something like that. All of Hawthorne I guess.**

13
14 **Vice Chairman Coyner stated it's a big area, especially with Walker Lake, you know we're always**
15 **dealing with Walker Lake. He then called for any other questions or discussion on the motion. Since**
16 **there were none, he called for a vote.**

17
18 **The motion carried unanimously.**

19
20 Vice Chairman Coyner moved to **Agenda Item No. VII. Settlement Agreements on Air Quality**
21 **Violations. A. CanAm Minerals, Inc.**

22
23 Mike Yamada stated today I have a number of settlements to bring before you, but before I go on I would
24 like to preface that all of these settlements have gone through the enforcement conference procedure where
25 we have the people come in and we discuss the alleged violations. They present their case, why it happened
26 and basically the mitigating circumstances associated with the alleged violations. The settlements
27 themselves are the result of the violations. The violations they admit to that we've established that they did
28 occur. The settlements themselves have been negotiated to be the fairest to them. They were all calculated
29 using the penalty matrix so there are no appeals to these particular settlements.

30
31 CanAm Minerals operates a stationary non-metallic mineral crushing and screening plant at the Black
32 Mountain pit located at 205 Duffy Road near Fernley. In November 2002 we got a complaint regarding
33 some dust coming from that facility. This facility has changed hands a number of times. It used to be
34 Oglebay Norton. It was taken over by a private person and then it was subsequently sold to CanAm
35 Minerals. When we sent an inspector out there we found that they weren't using their emission controls
36 properly. They have an oil spray which they put on the material, those things are all plugged. I wasn't
37 working. It was fuming pretty badly. They removed the emission controls around a vibrating screen which
38 was causing all kinds of problems. So we basically shut them down and told them that they needed to come
39 back and fix the system up. They did that after an enforcement conference. We had an enforcement
40 conference on November 6th. They paid a fugitive dust violation, but they also agreed that they were in
41 violation of three other things: failure to control fugitive dust on one of their system 9 and 10, they modified
42 the emission controls without our approval, and they also failed to control fugitive emissions on systems 2, 6
43 and 8 which is part of their crushing operation. On November 8 we told them they need to fix the situation.
44 On November 8 they called us. We went back and investigated and they were in compliance so we pulled,
45 we had them on a Stop Order, we pulled the Stop Order and they're now operating in compliance. They
46 recently shut down. They re-engineered the whole plant. That was part of the negotiations we went through
47 to make sure that they stayed in compliance. We are recommending that we settle the three NOAVs, 1716,
48 1717 and 1718 for \$3,060.

49
50 Vice Chairman Coyner asked who is the field inspector now that we don't have Susan anymore?

51
52 Mike Yamada answered May Cai and Jeryl Gardner also went out on this.

1 Commissioner Villaflor asked just to clarify things, the fines go to the county where the violation took place,
2 right?
3
4 Mike Yamada answered right.
5
6 Commissioner Villaflor asked does the enforcement arm get any part of this at all to support the State's lack
7 of budget?
8
9 Mike Yamada answered State law says that it has to go to the school district in which the violation occurred.
10 So we send every cent of it over to the school district in the county.
11
12 Commissioner Villaflor asked so you are not remunerated with the man-hours that were spent on the . . .
13
14 Mike Yamada answered no. Those are all paid for by fees by the permits. I think there's a 105 federal grant
15 also because we also do some federal programs.
16
17 Vice Chairman Coyner called for comments from the Commission. There were none. He called for
18 comments from the public. There were none.
19
20 Commissioner Ricci asked just for clarification, right at the very end you have a whole list of the source
21 description and the type of control equipment and every one of them says that they are out of compliance. Is
22 that correct? It says, "Operating yes, compliance no."
23
24 Mike Yamada answered yes, they are out of compliance.
25
26 Commissioner Ricci asked every single one of those?
27
28 Mike Yamada answered yes. Well what happened was I said when they took over the operation, I don't
29 really want to get (inaudible) with it, but there was a foreman out there that did a bunch of things and I think
30 they subsequently let him go, but he removed a lot of the emission controls and the things that were supposed
31 to be working like the sprays and things were not working, they were completely plugged. And they had to
32 re-engineer the whole plant.
33
34 Vice Chairman Coyner called for a motion.
35
36 **Commissioner Doppe motioned to approve the agreement for Notice of Violation 1716 through 1718.**
37 **Commissioner Ricci seconded the motion.**
38 **The motion carried unanimously.**
39
40 Vice Chairman Coyner moved to **Agenda Item VII. B. Getchell Gold Corp.**
41
42 Mike Yamada stated Getchell Gold is owned by Placer Dome. It's an active gold mining facility currently
43 operating on the general class air quality permit. Getchell is located in Humboldt County approximately 40
44 miles northeast of Winnemucca, Nevada. On February 7, 2003 representatives of Placer Dome America met
45 with representatives of NDEPA to discuss the operation of an un-permitted plant located at the Turquoise
46 Ridge Mine. For some reason or another in 1998 they took this cement plant, which is used for backfilling
47 purposes when they do their mining off their permit. But they continued to operate it all the way to 2003
48 when they notified us that they had a problem with it not being permitted. They came back and were going
49 through the permit process. We issued a compliance order to allow them to operate this particular facility
50 with some changes to it so they could continue operating at the Getchell Mine which they needed the backfill
51 material to keep backfilling as they dug out the ore. They also came back and provided us as-built plans for
52 this plant because the plans that we have didn't really reflect what was out there. They agreed that they were

1 in violation and agreed to a fine of \$11,250 for operating for approximately four years without a permit. We
2 are recommending that the Commission adopt the settlement that we agreed upon.

3
4 Commissioner Reavis asked Placer Dome actually came to you to report this violation?

5
6 Mike Yamada answered yes.

7
8 Commissioner Reavis asked you didn't discover it?

9
10 Mike Yamada answered no. For a number of years the mine didn't seem to be operating and when the
11 inspectors went up to it, the gate was locked and they couldn't see any kind of operation going on. So
12 nobody really knew that they were operating the facility. It's located not with the Getchell Mine, but it's just
13 several miles away from the Getchell Mine.

14
15 Vice Chairman Coyner called for further questions. There were none. He called for public comment. There
16 was none. He called for a motion.

17
18 **Commissioner Reavis moved to approve the settlement of NOAV 1733.**

19 **Commissioner Johnson seconded the motion.**

20 **The motion carried unanimously.**

21
22 Vice Chairman Coyner moved to **Agenda Item VII. C. Gopher Construction.**

23
24 Mike Yamada stated Gopher Construction operates a non-metallic mineral crushing and screening plant at
25 the Black Mountain pit off of Duffy Road near Fernley. They were doing the crushing for Can Am. They
26 had come in for a temporary change of location approval permit. They submitted the application and then
27 they started operations without getting the permit. So while the permit was being reviewed they were
28 already operating, which is a violation of the NAC. We also determined that they had not done their initial
29 opacity compliance demonstration. Every time you have a COLA you need to go out and if the equipment is
30 due, you need to go out and do what is called an opacity demonstration which is a 3 hour visual emission
31 reading for each of these. They were warned a number of times that this was needed. They did seven of
32 these COLAs and they did not provide any of these initial opacity demonstrations. So we have two types of
33 violations here, one for not complying with the opacity requirement demonstration compliance and the other
34 for operating without a permit. We gave them a Stop Order on January 8. The reason we fined them was
35 because of a complaint that was given to us on January 7th. During the procedure there's a number of
36 NOAVs that were issued, 1725 through 1730 to cover the failure to perform the initial opacity compliance
37 demonstrations and NOAV 1731 for operating without an air quality operating permit. We settled on a fine
38 of \$9,350 and that's the fine that we're recommending that the Commission approve.

39
40 Commissioner Crawford asked the Black Mountain pit, we've got multiple companies working in the . . . ?

41
42 Mike Yamada stated they are separated by several miles, a couple of miles. One is a crushing and gravel
43 operation which brings the material down to the CanAm facility which is owned by CanAm and they take
44 that material and process it.

45
46 Vice Chairman Coyner asked Mr. Tibbals is our friend from Yerington? Is that correct?

47
48 Mike Yamada answered yes.

49
50 Vice Chairman Coyner called for further questions from the Commission. There were none. He called for
51 public comment. There was none. He called for a motion.

1 **Commissioner Ricci moved to accept NOAV 1725 through 1731.**

2 **Commissioner Reavis seconded the motion.**

3 **The motion carried unanimously.**

4
5 Vice Chairman Coyner moved to **Agenda Item VII. D. Jaynes Corporation.**

6
7 Mike Yamada stated on October 7, 2002 Jaynes Corporation cleared a portion of 28 acres in preparation to
8 build a Wal-Mart store at 300 South Highway 160 in Pahrump, Nevada. We got a fugitive complaint from
9 them on October 8, 2002. Our inspector went out on October 16 and saw that the site was being well
10 controlled but when she went back to the office she found out they didn't have a permit for the operation.
11 Jaynes Corporation said they didn't know they needed a permit. They had never worked in Pahrump before.
12 We had an enforcement conference and we determined that 1735 should be issued for failure to obtain an air
13 quality surface area disturbance permit. They agreed that they had violated the code for that. They agreed to
14 an administrative penalty of \$4,800. This is the amount that we're suggesting that the Commission accept as
15 payment for this fine.

16
17 Commissioner Ricci asked I'm assuming then as part of this whole thing, they get a permit immediately, or
18 they make an application for a permit immediately?

19
20 Mike Yamada answered right. They put the application and we say, "You have to get permit application"
21 and we had a Stop Order on them so they couldn't operate and so they immediately got the application in and
22 then we had a process. We did try to speed up the application so they could finish the job, but . . .

23
24 Commissioner Ricci asked so they can't work until they get the permit done, is that correct?

25
26 Mike Yamada answered no.

27
28 Vice Chairman Coyner called for further questions. There were none. He called for public comment. There
29 was none. He called for a motion.

30
31 **Commissioner Reavis moved to approve the settlement for NOAV 1735.**

32 **Commissioner Johnson seconded the motion.**

33 **The motion carried unanimously.**

34
35 Vice Chairman Coyner moved to **Agenda Item VII. E. Julian Aragon-Perez.**

36
37 Mike Yamada stated they were building a (inaudible) facility of 18 acres. (Inaudible) 2003 our inspector
38 noticed this large piece of property had been disturbed and they were still working on it when she called me
39 up to find out if they had a permit or not. This is in Pahrump. It turns out they did not have a permit. She
40 issued a Stop Order. We had an enforcement conference on March 7, 2003. We discussed the issue with an
41 agent for Mr. Julian Aragon-Perez. They were in the process of building a very nice horse training facility,
42 but they didn't know they needed a permit. So, it also turns out that they hadn't notified the Nye County
43 Building Department that they were building more facilities. So, after we met with Mr. Hart, he agreed that
44 they had violated the requirement to obtain a permit and we assessed him a fine of \$600 which he agreed to
45 pay. We're recommending that the NOAV 1734 be settled for the sum of \$600.

46
47 Commissioner Reavis asked Michael explain to me why we fined the company right before this \$4,800 for
48 exactly the same thing on 28 acres and we're fining this fellow \$600 for, what are the factors that go into
49 making this difference?

50
51 Mike Yamada answered these are fines per day and unfortunately we caught Wal-Mart well into the process.
52 These people had started to work on this piece of property and we caught them so the fine, the number of
53 days that he was actually operating is shorter than the days that Jaynes Corporation was . . .

1
2 Commissioner Henderson stated I understand the disturbance permit and there's probably conditions that you
3 put on it that they occur during the duration of that construction permit or that permit. What are your
4 procedures? There's no permit issued on a facility like this after that point, is there? After construction, after
5 disturbance, or?

6
7 Mike Yamada answered no. Once the facility is constructed it depends on exactly, like on this particular
8 facility, the horse facility, once they've constructed it they will go in and they'll grass the area up and they'll
9 do things that . . .

10
11 Commissioner Henderson asked is that a condition of your disturbance permit?

12
13 Mike Yamada answered yeah it says that they have to implement an ongoing program of fugitive dust
14 control. So the permit is good for five years and so they just continue on. If they don't use best practical
15 methods, then they're subject to another fine.

16
17 Commissioner Henderson asked but probably not under the permit clause? It would be under some other
18 violations, fugitive dust?

19
20 Mike Yamada stated it's actually in the permit itself. One other thing is, on a large acreage like anything
21 over 20 acres they're required to submit a dust plan on how they're going to do the dust control. In this case
22 they didn't have either.

23
24 Vice Chairman Coyner stated it looks like you initially had trouble getting a hold of Mr. Hart, but then he
25 apparently had a change of heart, and got a hold of you. It took two months to find the guy.

26
27 Commissioner Ricci asked was it Costco or Wal-Mart down in Carson City?

28
29 Mike Yamada answered we had an issue with Wal-Mart with Crockett Engineering.

30
31 Commissioner Ricci stated maybe we ought to tell Wal-Mart what they should do before they start a new
32 store.

33
34 Mike Yamada stated with the Jaynes Corporation, they did get a hold of the Wal-Mart Company and did
35 discuss that issue with them.

36
37 Vice Chairman Coyner called for further questions from the Commission. There were none. He called for
38 public comment. There was none. He called for a motion.

39
40 **Commissioner Henderson motioned to approve NOAV No. 1734 settlement.**

41 **Commissioner Crawford seconded the motion.**

42 **The motion carried unanimously.**

43
44 Vice Chairman Coyner moved to **Agenda Item VII. F. Nevada Drilling Fluid, Inc.**

45
46 Mike Yamada stated Nevada Drilling Fluids is a company that operates a barite mining operation. They
47 crush, process and wash barite ore at various locations in Nevada. They have a business office in
48 Winnemucca, Nevada. They're regulated by the Bureau of Mining and Reclamation for its barite mining
49 activities and we regulate them for their constructing and operating stationary sources and surface area
50 disturbance over 5 acres. The mining and reclamation people notified us of this operation. We didn't know
51 they were operating and turned, that the Miller and Slavin Pit, Miller pit is located in Eureka County and
52 Slavin Pit is located in Lander County. The Miller pit was actually being run by Gopher and they did have a
53 permit for that. So the only issue with us was the Slavin Pit which they claimed was under 5 acres. We had

1 their engineer check it out. It turned out they had disturbed 11 acres, so they needed a permit. We had an
2 enforcement conference with them. They said that yes they did violate the regulation for obtaining a surface
3 area disturbance permit and we ended up agreeing to a settlement of \$850 for the above violation. We're
4 recommending that NOAV No. 1700 be settled for \$850.

5
6 Vice Chairman Coyner called for questions.

7
8 Commissioner Henderson asked are you ready for a motion Mr. Chair?

9
10 Vice Chairman Coyner stated I'll have to ask for public comment first, even though I have some on this, but
11 I won't do it. Having familiarity with this particular operation since they have the reclamation bond through
12 me. I'll ask for a motion for approval then, seeing no public comment.

13
14 **Commissioner Reavis motioned to approve the settlement of NOAV 1700.**

15 **Commissioner Johnson seconded the motion.**

16 **The motion carried unanimously.**

17
18 Vice Chairman Coyner moved to **Agenda Item VII. G. Onyx Construction, Inc.**

19
20 Mike Yamada stated Onyx Construction is a company that operates temporary crushing and screening plants
21 in various locations in Nevada with its main office in Bismarck, North Dakota. Onyx primarily subcontracts
22 their services through companies for highway projects. General air quality permit AP 1442087801 was
23 issued to Onyx in Nevada in 1999. What happened here is back in June of 2002 one of our inspectors
24 happened to be traveling through the Beatty area and they noticed that an operation had been there and when
25 they returned back later in July they found that it was being dismantled. So they called in and asked about
26 this particular operation and found out that they had submitted an application but never received a permit
27 because their application basically would not allow them to operate. There was something like 648 lbs. a day
28 of PM 10 would be emitted. Based on their application they're limited to 32. They operated anyway and the
29 only reason we caught them was because the inspector just happened to drop in on them. We had an
30 enforcement conference with them on July 17. They pretty much said that yeah they operated. It was just a
31 matter of the penalties that we discussed. We settled on an amount of \$5,026 and we are recommending that
32 NOAV 1722 be settled for the sum of \$5,026.

33
34 Commissioner Reavis asked was Onyx notified that their permit application had been denied?

35
36 Mike Yamada answered yeah. There were several attempts to try to get them to get in and rework their
37 permits because they needed to put water sprays and things to knock the amount of PM 10 down. They kept
38 insisting that they couldn't possibly be putting out that much PM 10. I met with them in Las Vegas. We
39 went over the calculations and the person I was dealing with kept insisting that it couldn't be done, that it
40 was impossible for them to put out that much. But they never tried to modify the permit or anything like
41 that.

42
43 Commissioner Reavis asked this was kind of a willful violation then?

44
45 Mike Yamada answered I would say that it was an uninformed violation by the person we were dealing with.
46 I know they operated, they thought they gave us, and I don't understand exactly because they've been here
47 since '99 that they would get their permit immediately because generally it's like a 30 day application thing.
48 But, because there was a problem with the application and they didn't respond in a manner to fix the
49 application and start to operate, I would say it was somewhat willful, yes.

50
51 Commissioner Johnson asked we've looked at the minor violations, but is this a case where even the major
52 \$5,000 is not enough to have made them comply?

1 Mike Yamada answered I think because this company isn't really a large company from what I gather, I
2 think the \$5,000 probably set them back a little bit. They operate in Nevada, just trying to contract with
3 people that do asphalt plants. I think we just got an application in recently, but they didn't really have that
4 many COLAs with us. I mean I think if we hit them for something like \$20,000 we'd probably would have
5 put them out of business.

6
7 Commissioner Ricci asked was this a highway project that they were working on?

8
9 Mike Yamada answered yes. They were working outside of Beatty doing a State job.

10
11 Commissioner Ricci stated the way that we deal with these guys on how they get permits for water is that the
12 Highway Department (inaudible) a different process, rather than the permit, but we have a provision in our
13 law that allows them to have a waiver for the use of water for the term of the project. I'm surprised that
14 NDOT doesn't tell you or tell them that they need an air quality permit.

15
16 Mike Yamada stated well they knew they needed the permit, it's just that they took so long in trying to
17 resolve the fact they couldn't get a permit because when we did the calculations they were way over on the
18 allowable PM 10 emissions.

19
20 Commissioner Ricci asked have you told the Highway Department, or NDOT this?

21
22 Mike Yamada answered NDOT was very helpful. They provided us with pictures to show how they had
23 been running.

24
25 Vice Chairman Coyner stated I guess I have a question about, they didn't operate before June 7, 2002
26 because they didn't have a permit. At least we don't think they did. But then on July 3, 2002 is when we
27 cited them. Do we have any idea how much material they crushed between June 7 and July 3? And I'll just
28 add, because where I'm going, you run an asphalt plant at full-bore for a month or it may have been a little
29 less than a month, you can produce a hell of a lot worth more than \$5,026 worth of air . . .

30
31 Mike Yamada answered yes. The particular plant they were working on operated a maximum of 425 tons
32 per hour because they were under a compliance order to us to not exceed that. So, yes, they did quite a bit.

33
34 Vice Chairman Coyner stated so your point that \$20,000 might break them, I don't think holds water because
35 \$5,026 worth of air given that time frame is nothing in my opinion. Any other questions from the
36 Commission? Any public comment? Seeing none I'll ask for a motion.

37
38 **Commissioner Johnson motioned for adoption of NOAV 1722.**

39 **Commissioner Henderson seconded the motion.**

40 **Vice Chairman Coyner called for discussion.**

41
42 **Commissioner Henderson stated I guess I do have a question and I guess I'm just wondering if all of**
43 **these have been violations of what's the word I'm looking for? This is a disturbance permit issue**
44 **right? No, it's not a disturbed area permit issue, is it?**

45
46 **Mike Yamada answered no. This is an air quality operating permit.**

47
48 **Commissioner Henderson stated I'll hold my question for another violation.**

49
50 **The motion carried unanimously.**

1 Vice Chairman Coyner moved to **Agenda Item VII. H. Ribeiro Corporation.**

2
3 Mike Yamada stated on May 9, 2003 I was driving by Quail Park and saw this big operation out there and
4 they had cleared off all this land, but I don't remember seeing a permit for that particular piece of property.
5 We contacted the Ribeiro Corporation and found out they had put in an application but they had not received
6 it because we had just gotten the permit a short while ago. They thought they could operate because they had
7 a water pollution control permit, well it was for storm water runoff. They thought they could operate like
8 they do for storm water runoff. If you have an application in, you can actually start the work to put into the
9 protective devices. They agreed that they had violated the requirement. They said they basically were out of
10 Reno and that they didn't realize that the State had a requirement. They had pretty much cleared off the land
11 by the time we got there. We agreed on a penalty of \$1,020 for NOAV 1745 and that's the amount that
12 we're recommending to settle NOAV 1745.

13
14 Commissioner Henderson asked what kind of outreach and education process do you have on this surface
15 area disturbance permit issue?

16
17 Mike Yamada answered we have the requirements on the Internet, but most of the contractors that do work in
18 the State, understand that there is a surface area disturbance permit requirement. I think some of the
19 engineering firms, this was done, but the engineering firm that did the project may not know about it. I think
20 the contractors themselves know about it. I think the engineering firm that did this job is going to be actually
21 paying the fine for these people in the end. But it was because they are out of Reno and they do Washoe
22 County projects and they didn't know about our permit system.

23
24 Mike Elges stated the Division sponsors or funds a position with the Small Business Assistance Program
25 through the University of Nevada Reno that is set up as a free and independent resource for exactly these
26 types of issues. We monitor the response and input made by the regulated community and other parties into
27 that network with the university and through that they also coordinate workshops to get information out
28 regarding the different types of permits that are required, pollution control technology that's available and
29 use that as our primary mechanism for outreach to the industry. I can also speak for our staff as well that we
30 receive a number of phone calls and inquiries related to permit requirements, basic dust control requirements,
31 what have you. So I think there's a reasonable amount of outreach for an agency or a bureau that's
32 structured primarily as a regulatory aspect.

33
34 Commissioner Henderson asked how many of these types of violations do you experience a year roughly?

35
36 Mike Yamada answered this has been a very busy year for us. I would say (inaudible) operating without a
37 permit, surface area disturbance permit?

38
39 Commissioner Henderson answered yes.

40
41 Mike Yamada stated it's hard to put a number on it. I don't really recall.

42
43 Commissioner Henderson asked 20, 50, 100?

44
45 Mike Yamada answered probably more than 20.

46
47 Commissioner Henderson asked less than 50?

48
49 Mike Yamada answered yes.

50
51 Commissioner Henderson asked and what's your perception? Do you have just some bad actors out there
52 that just don't want to comply with, or how much of these violations are due to ignorance as opposed to just
53 trying to get around a requirement?

1
2 Mike Yamada answered it's hard to put a number on things like that, but I would say maybe half of them are
3 due to ignorance because they're Washoe County firms or they're Clark County firms operating outside of
4 their normal working area. The Jaynes Corporation is basically a Clark County operation and when it went
5 to Pahrump they pretty much blew it.

6
7 Allen Biaggi stated I don't believe that there's any excuse for a construction company to not know the
8 requirements to control dust. In southern Nevada, in Clark County, it's a tremendous issue and one that is
9 well-publicized and I think everyone knows here in northern Nevada the Helms Corporation was put out of
10 business essentially by dust settlement issues a decade ago. So I really don't think that there's any excuse for
11 a construction company of any size not to be aware of the requirements to control and mitigate dust.

12
13 Commissioner Henderson asked have you looked into, I mean all these contractors have to have a
14 contractor's license and training and testing. Are you in the loop on that process there of providing education
15 to contractors and disclosure to them?

16
17 Mike Elges answered I personally have worked very closely with the Association of General Contractors on
18 a number of issues. From my perspective, we're obviously very open to communicating with all the different
19 types of industries that we have. I tend to agree with what Mr. Biaggi has said. I believe we've provided as
20 much outreach as we possibly can and I think there's a clear understanding within the regulated community
21 that these regulations and requirements apply.

22
23 Commissioner Doppe stated it would be relatively easy to enlist the aid of the Building Trade Associations,
24 AGCs north and south, the Home Builders Associations north and south to ask them to send a mailing out
25 and say, "There is no place in the State of Nevada where you can disturb top soil without needing prior
26 approval from somebody." And it is incumbent upon the contractor to find out who that is and get it. I think
27 that's a reasonable thing and the State doesn't have to spend a nickel, you can spend five phone calls and talk
28 to each of those trade associations and there's only 5 or 6 of them or 10 of them at the most. You can cover
29 every single contractor in the State that is doing that whether they're in Clark County where they know
30 better, or whether they sneak across into Nye County where they do or don't know better. It'd be fairly
31 simple to have their trade associations notify them.

32
33 Mike Elges stated I think I understand the concept behind simple communication and simple education, and
34 again I feel pretty strongly that the resources that we've provided through the Business Environmental
35 Program, that that very action takes place on a much broader scale than just the construction trades. Until
36 more recently I actually had one staff member that embarked on a mission across the State to visit all of the
37 local county and city folks that were responsible for construction projects right on down to the land
38 development, home building level, and provided quite a bit of documentation about the requirements for
39 basic dust control and permit requirements throughout Nevada. Unfortunately I don't have that position any
40 longer and we've had to absorb that through the balance of our program. But again, the door is wide open
41 there and I'm not sure I guess how much overall resources should be put forth for educational purposes of the
42 requirements above and beyond what we've already done.

43
44 Commissioner Doppe stated I would recommend that the answer is not much by way of additional resources.
45 But if you were to design up a flier, you know, you "call before you dig" kind of a thing, and you would need
46 to make six of those fliers, or 10 of them and give one to each of the trade associations along with a letter
47 that says, "Recently there have been a rash of violations from people acting without a permit," and we would
48 ask the Trade Association to distribute a copy of this letter to every one of their members with their next
49 regular mailing, which they do all the time, and remind of them of you know what I said before and it
50 probably would cost us \$100 to do that. I've never received anything like that. I would hope that I'd be wise
51 enough if I were ever to go to Nye County and build I would call because somebody's always watching.

1 Mike Elges stated we'd be happy to do that. Like Mike said, we have more information available today on
2 our Website than we've ever had regarding these issues and so we're . . .

3
4 Commissioner Doppe stated you could reference that in the flier.

5
6 Mike Elges stated we're always interested in how we can communicate better with the regulated community.

7
8 Commissioner Henderson stated I just wanted to find out what kind of education has been done. I did not
9 want to indicate that I was pointing fingers that not enough was done. But you know the "call before you
10 dig" I'm sure there are violations. There are people out there digging still that don't call and you're not
11 going to get everybody.

12
13 Vice Chairman Coyner asked so we'll take that as a promise to do that?

14
15 Mike Yamada answered I'll take care of that part of it.

16
17 Vice Chairman Coyner called for further questions. There were none. He called for public comment. There
18 was none. He called for a motion.

19
20 **Commissioner Doppe motioned to accept the settlement agreement for Notice of Alleged Violation**
21 **1745.**

22 **Commissioner Crawford seconded the motion.**

23 **The motion carried unanimously.**

24
25 Vice Chairman Coyner moved to **Agenda Item VII. I. Sierra Pacific Power Co.**

26
27 Mike Yamada stated Sierra Pacific Power Company is an investor-owned electric and gas utility that
28 generates, transports and distributes electrical energy and provides natural gas products in Nevada and
29 California. The Nevada Division of Environmental Protection is responsible for issuing air quality permits
30 for Sierra's generating facilities. The Public Utilities Commission regulates Sierra's electric and natural gas
31 rates. We were notified by Sierra Pacific that they had discovered that their Battle Mountain Generator
32 Station located 1 mile west of Battle Mountain and Highway 80 had exceeded their SO₂ emissions and it
33 turned out it was because their fuel tank had .09 percent sulfur, they're limited to .05 percent sulfur. We met
34 with them in an enforcement conference January 30, 2002. They had provided us information regarding their
35 units 2, 3 and 4. They also gave us information regarding their fuel deliveries and all of the fuel deliveries to
36 that tank said 5 percent from the company that delivered them. So how the thing got to be 9 percent has
37 never really been resolved. But it was at 9 percent. So they drained the tanks. They stopped their operation.
38 They refilled the tanks with 5 percent oil and they started operating again. We agreed to settle the violations
39 for a total of \$4,505.00. There are three different amounts associated with that. For one unit, unit 2 there
40 was \$765, \$1,020 for unit 3, \$2,720 for unit 4 and that's all based on the total amount of emissions that each
41 of those generators put out. We're recommending that NOAV 1650, 1652 and 1653 be settled for a sum of
42 \$4,505.00.

43
44 Commissioner Ricci asked when you mentioned 5 percent and 9 percent, you meant .05 and .09 percent?

45
46 Mike Yamada answered yes, .05 and .09.

47
48 Commissioner Reavis asked do you know what action the power company took against its supplier?

49
50 Mike Yamada answered no. I guess they couldn't determine where they got the 9 percent oil from because
51 every one was certified to be 5 percent, I mean .05 percent.

52
53 Commissioner Reavis asked and they have multiple suppliers?

1
2 Mike Yamada answered yes and they didn't have that many deliveries because they really weren't running
3 these units very often. So I don't think they've taken an action because you really can't tell which one
4 provided the high-sulfur oil.
5
6 Commissioner Henderson asked did you actually pull samples and have this diesel tested?
7
8 Mike Yamada answered no. They tested it themselves.
9
10 Commissioner Henderson asked they tested it and provided you the laboratory results?
11
12 Mike Yamada answered right.
13
14 Commissioner Johnson asked in the rules a diesel for off-road vehicle can be 5,000 ppm sulfur I think, but
15 normally the lab testing other than the "northeast Nevada exclusion" is below 500? Is that correct? You
16 don't do testing on diesel fuel for stationary sources?
17
18 Commissioner Henderson answered that's correct, just commercial sources. Now if somebody submits a
19 sample for analysis of course we'll work with that, but there's no regulatory obligation for the Department to
20 sample stationary sources.
21
22 Commissioner Johnson asked but we do have a regulatory standard for off-road diesel, I believe. Is this true?
23
24 Commissioner Henderson answered we have red fuel for farming equipment and so forth that can't be used
25 on federal . . .
26
27 Commissioner Johnson asked okay and that's 5,000? But there's no testing?
28
29 Commissioner Henderson answered it's just that that's handled by the Highway Patrol if they pull over a
30 vehicle. The issue there is . . .
31
32 Commissioner Johnson stated it's red or not and they don't test for sulfur anyway.
33
34 Commissioner Henderson stated you know they're using red diesel on a federal highway or state highway.
35 That's the prohibition.
36
37 Commissioner Johnson stated yes and they wouldn't be testing for sulfur anyway.
38
39 Commissioner Ricci called for further questions. There were none. He called for public comment. There
40 was none. He called for a motion.
41
42 **Commissioner Reavis motioned to accept the settlement of NOAV 1650 through 1652.**
43 **Commissioner Villaflor seconded the motion.**
44 **The motion carried unanimously.**
45

1 Vice Chairman Coyner moved to **Agenda Item VII. J. Vogue Linen and Uniform Rental.**
2
3 Mike Yamada stated Vogue Linen and Dry Cleaning operate out of Elko. On February 21, 2003 we got a
4 letter from them saying that they burned fuel oil in their boilers and they didn't realize it but they were
5 limited to natural gas in their boilers so they basically turned themselves in. On March 12 we looked at their
6 annual production report and we found that they had exceeded SO₂ annual emissions for Boiler No. 2 and
7 SO₂ and NOX for Boiler No. 1. We held an enforcement conference April 14, 2002 and they admitted that
8 they had exceeded their emissions for SO₂, NOX and CO for Boiler 1 and for SO₂ for Boiler 2. They
9 basically admitted they were guilty and that they would pay the fine. We negotiated a fine which turned out
10 to be \$3,120 and we're recommending that the Commission adopt that settlement for NOAV 1730 to 1743
11 for the sum of \$3,120. They were very straight forward in coming to us and saying that they were in
12 violation.
13
14 Commissioner Ricci asked the fact that they exceeded these limitations were based on the combustion of
15 natural gas. Is that correct?
16
17 Mike Yamada answered yes. They're not allowed to burn fuel oil.
18
19 Commissioner Ricci asked could they have made an application for fuel oil for that particular . . . ?
20
21 Mike Yamada answered they now have an application in for fuel oil.
22
23 Commissioner Ricci asked and the fuel that they burned, would they have been permitted for that type of
24 emission?
25
26 Mike Yamada answered I really couldn't tell you because I don't know how much fuel oil they were asking
27 to burn.
28
29 Commissioner Johnson asked in the matrix is a difference or an account made for people who self-report
30 versus people who are caught not in compliance?
31
32 Mike Yamada answered yes I'm allowed to reduce the fines if they come in early, up to 25 percent if they
33 cooperate up-front and turn themselves in. Another 15 percent if they are very cooperative in resolving the
34 violation. In this case on both ends they were very cooperative.
35
36 Commissioner Reavis asked so what percentage?
37
38 Mike Yamada answered I think I gave them a total of 40 percent to reduce it.
39
40 Vice Chairman Coyner stated so they got the break.
41
42 Mike Yamada stated I think that's kind of a good thing for people to know because there's been more self-
43 reporting lately to us to take advantage of the breaks.
44
45 Vice Chairman Coyner called for further questions. There were none. He called for public comment. There
46 was none. He called for a motion.
47
48 **Commissioner Ricci motioned to accept Notice of Violation 1738 through 1743.**
49 **Commissioner Villaflor seconded the motion.**
50 **The motion carried unanimously.**
51

1 Vice Chairman Coyner moved to **Agenda Item VIII. Presentation on Mining Reclamation Fees**

2
3 David Gaskin introduced himself as chief of the Bureau of Mining Regulation and Reclamation with the
4 Division of Environmental Protection. He stated as you may recall about a year ago in the spring of 2002 we
5 came before the Commission to institute an increase in the fees for the reclamation permitting program for
6 mining. We hadn't had any increase in fees over a decade since the program was established and at that time
7 we had committed to industry that this issue would be brought again before the Commission in 2003 in order
8 to re-look at the issue. It was a fairly significant increase, as I said it had been a long time since there was
9 any increase in the fees. It was a time of difficult economic conditions for the mining industry with
10 decreased metals prices and the main reason I think was that it was out of sequence with the mining
11 company's budgeting process. They prepare their budgets in the fall in anticipation of the next calendar year
12 and this was a change that was done in the spring. So we wanted to give industry time to digest this change
13 and maybe plead for relief if things didn't work out well, but I think things have worked out and the
14 (inaudible) Mr. John Brown will address that in a minute. I need to point out that we are in discussion with
15 industry currently on one issue which is fees for modifications to the permits. We have really been trying to
16 find a way to make the amount of the fee equitable to the amount of work required to process a modification
17 to the permit and we are currently internally looking at the workloads required for different types of
18 modifications and as I said we're discussing this issue with industry. If a regulatory revision is required we
19 anticipate bringing that before you in the fall of this year.

20
21 Vice Chairman Coyner called for questions from the Commission. There were none. He called for public
22 comment. There was none. He called upon Mr. Brown.

23
24 Jonathan Brown introduced himself as director of Environmental and Regulatory Affairs for the Nevada
25 Mining Association. He stated we appreciate this opportunity to work with the Division regarding this
26 matter and as Mr. Gaskin mentioned we are in agreement with a continuation of the fees approved last year
27 with the exception of the modification fees which he pointed out we're in negotiation with them to stair-step
28 those fees in a manner that would match the magnitude of the disturbance or magnitude of the modification
29 request to the fee. So we look forward to coming back in the fall and presenting those jointly with the
30 Division.

31
32 Vice Chairman Coyner called for questions from the Commission.

33
34 Commissioner Henderson stated I'd be interested just purely from an administrative perspective how you go
35 about estimating your time by a permit. Can you track something like that through your timesheet reporting
36 process or does it require some other documentation?

37
38 David Gaskin explained the previous criteria was based on an increase in acreage for a particular
39 modification, but it was recognized that a lot of modifications to a mining operation may take place on land
40 that's already permitted for disturbance. You may have a huge new project, but little incremental acreage.
41 So that was inequitable. Now what we're looking at is actual man-hours. We haven't gone to the formal
42 step of instituting a timesheet-type of tracking, but Connie Davis, who's the supervisor of the Reclamation
43 Branch is looking at the various types of modifications we're currently processing and trying to determine if
44 there is some type of tangible criteria where we can put the different types of modifications into categories
45 and then relate those to amounts of work required and, consequently, to a fee.

46
47 Commissioner Henderson stated I'll be interested in seeing how all that works out.

48
49 Vice Chairman Coyner called for further questions. There were none. He moved to **Agenda Item IX.**
50 **Status of Division of Environmental Protection's Programs and Policies.**

51
52 Allen Biaggi introduced himself as being with the Division of Environmental Protection. He stated first of
53 all I want to point out some staff changes that have occurred since our last meeting with the Division of

1 Environmental Protection. Beginning July 1 of this year Verne Rosse will join Mr. Reavis in wonderful
2 retirement. Verne has been with the agency for 34 years, has been a deputy administrator for many, many
3 years and has been a wonderful employee over those years and holds a tremendous amount of historical
4 knowledge of the agency and while we are very sad to lose Verne, we're also very happy with his retirement
5 and moving on to a new point in his life.

6
7 Vice Chairman Coyner asked if there's an activity, could we be notified please?
8

9 Allen Biaggi answered there is an activity and it is scheduled for next Friday the 27th. We have some fliers
10 in the agency. It's a barbeque that will be held at Genoa State Park at Mormon Station and we are all
11 cordially welcomed to participate and attend and give Verne the send-off he so richly deserves. With
12 Verne's retirement we have solicited people for a new deputy administrator and I'm happy to report that Leo
13 Drozdoff has been appointed to that position. Because Leo and Jolaine Johnson, the other deputy, have some
14 very unique education and work experience skills, we're going to modify slightly the programs that they'll be
15 responsible for. Leo will be overseeing the Bureaus of Water Pollution Control, Water Quality Planning,
16 Mining Regulation and Reclamation and the Bureau of Corrective Action. While Jolaine will take over the
17 Bureau of Air Pollution Control, Air Quality Planning, Federal Facilities and Waste Management. So a little
18 shift in responsibilities, but I think it will play well to their respective experiences and abilities and I'm very
19 excited to have both Leo and Jolaine acting as deputy administrators. I think it'll be a wonderful shift and
20 they'll do a great job. Also, as we've discussed this morning, David Cowperthwaite has also joined
21 retirement and he told me this morning he spent a very hard morning sorting out his bungee cords in his
22 garage and David, again, was a 30 year employee and did a wonderful job for the Commission as you all
23 well know. We have solicited applications for David's position and will be doing interviews in the next
24 week or so and we should have somebody on board shortly thereafter. We do have a vacancy in our Bureau
25 of Water Pollution Control that Leo left and we are seeking internal transfers for that position and ultimately
26 there will be another bureau chief opening within the agency and we'll go after that.
27

28 With regard to the budget and legislative issues, we had a very successful legislative session. Right now we
29 have 191.5 full-time employees split between our Las Vegas and our Carson City offices, not including our
30 special funds such as the State Revolving Loan Programs, the State Petroleum Fund and etc., our approved
31 budget for FY 04 is \$25 million and \$27 million for '05. We have secured nine new positions, six of those
32 within Air Quality and we additionally have secured \$200,000 in replacement fees as a result of what we
33 anticipate is the shut down of the Mohave Generating Plant, not because of air quality issues, but primarily
34 because of issues related to their coal contracts and probably more importantly their water issues for
35 slurring their coal from their Arizona coal beds to the Laughlin facility. We also received some new
36 programs out of this legislative session, specifically the Laboratory Certification program, dealing with
37 laboratories on the clean water side and safe drinking water programs, that's two new employees to the
38 Division as well as that new program and we are also going to begin the switch of bringing the Safe Drinking
39 Water programs from the State Division of Health to the Division of Environmental Protection. We'll be
40 starting with three new employees with the Revolving Loan Program and over the next two years we'll be
41 working to bring that entire program over, which I think is about 15 or 18 additional employees on top of
42 that. So, from a budgetary perspective it was a very successful session for us.
43

44 We had some legislation that passed that will impact the programs and you'll probably hear about in the near
45 future. AB 74 dealt with the Brownfields programs and allows us to establish a revolving loan program to
46 provide low interest loans to communities throughout the State to address contamination on properties. AB
47 129 clarifies that interest payments will be made into our programs, rather than being sent to the general
48 fund, which was a new interpretation made by the treasurer over the last two years. AB 473 provides the
49 consolidation authority to bring the safe drinking water programs over to the Division. AB 485 is a bill out
50 of the Landville Corporation in southern Nevada that further defines the Brownfields requirements and
51 makes those Brownfields requirements consistent with federal law. SB 58 allows us to operate a RCRA
52 laboratory certification program. It's going to be a large body of information that you will be hearing
53 probably at the end of the year in the December meeting which will allow us to certify laboratories

1 conducting hazardous waste analyses. SB 127 revised the Chemical Accident Prevention regulations. It took
2 much of the detail out of statute and allows us to put it into regulation. Obviously you're going to hear a
3 large body of CAPP requirements. You'll be hearing from Mark Zusy again probably at the end of this year.
4 SB 200 and SB 233 modified the provisions to the Board to Finance Water Projects. SB 200 allows us to
5 apply approximately \$4 million in additional bonding capacity towards Spanish Springs and hookups to a
6 community water system to address groundwater nitrate contamination within that community. And SB 200
7 increased the bonding capacity of the Board to Finance Water Projects by \$17 million in order to provide
8 grants for drinking water systems throughout the State. Finally, SB 500 increased inspection and
9 maintenance fees for smog checks by \$1 to provide support for our air quality programs as well as Mr.
10 Henderson's programs, TRPA, DMV and the local health boards and health agencies for air pollution in
11 Washoe and Clark Counties. We did suffer one major loss of legislation throughout the session, that was AB
12 447 which dealt with solid waste tipping fees and to beef up recycling in southern Nevada. Unfortunately,
13 we came up against the two large garbage companies within the State who had some problems with these
14 bills. But I can assure you we will be back next session better prepared and once again pursuing those two
15 issues.

16
17 A couple of other very quick issues, information came out this week with regard to tungsten and the Fallon
18 and Churchill cancer cluster. Centers for Disease Control, State Health Division and our agency did follow-
19 up sampling in three communities in Nevada: Yerington, Lovelock and Pahrump to address what tungsten
20 values were in residences within those areas in comparison to Churchill County. We found a very similar
21 situation in the community of Yerington as Churchill County, elevated levels of tungsten in both the water
22 and in the urine of the citizens in that area. Lovelock and Pahrump had much lower levels within the
23 drinking water, but elevated tungsten levels and there aren't the cancer issues associated with like Churchill
24 County in those three communities. So that would suggest that tungsten is not a major contributing factor in
25 the cancer cluster in Churchill County. However, tungsten may be associated as a secondary or additional
26 cause not directly related and that is a subject of further study from the federal government.

27
28 Finally, a relatively large issue came up over the last six months with regard to air quality programs and
29 because it's rather technical I'm going to go ahead and read this to give you a briefing on it. "On December
30 31, 2002 the U.S. Environmental Protection Agency adopted changes to the new source review prevention
31 of significant deterioration regulations. As part of this rule making EPA required that these new provisions
32 become effective in all delegated states on March 3, 2003. Our existing regulations adopt the federal
33 regulations by reference as they existed on July 1 the year 2000. As a result our PSD delegation was revoked
34 by EPA on March 3, 2003. Nevada was one of 12 states with a delegated PSD program. In Region IX, six
35 California air districts, including South Coast, Bay Area, Kern County, San Diego, Santa Barbara and Shasta
36 had their programs revoked as well as ours and Washoe County's. Clark County's program was not revoked
37 because it has a SIP-approved program.

38
39 Since that revocation we've been working with EPA to partially reinstate our authority to implement this
40 program in Nevada. On June 3, 2003 EPA Region IX and the Division entered into a partial delegation
41 agreement that will allow the Division to continue to implement the PSD program as it existed prior to
42 December 31. Basically, that agreement allows the Bureau of Air Pollution Control to implement and
43 enforce the federal PSD regulations for all new stationary sources except for the provisions that became
44 effective March 3 and process applications for major modifications at existing sources under the old
45 requirements." What that means is basically we were granted the authority to operate the PSD program
46 under the old federal regulations similar to the way that the program is being implemented in SIP-approved
47 states until we can adopt what we feel are necessary implementing regulations and change the adoption
48 reference date. The partial delegation agreement gives us until the end of January 2004 to adopt the
49 regulations we would need to be granted full delegation. We've been working with the affected sources to
50 develop those regulations and are hoping that we will be able to propose them for adoption before this body
51 some time in the fall. The bottom line here is that while we don't have full delegation, there are no industries
52 in the State of Nevada that are in a situation that will be coming to us seeking permitting under the new PSD

1 sources. So I think that does buy us some time to work with our sources and come up with a set of
2 regulations that will satisfy both our regulatory requirements and the needs of our regulated community.

3
4 Commissioner Reavis asked what are you going to do for space?

5
6 Allen Biaggi answered Verne is taking a look right now at perhaps modifying some of our existing building
7 walls and structures and bringing in modular desk systems which better utilize the space that we do have.
8 We are going to see if that's a cost-effective means of addressing our space problem in the short term. If that
9 doesn't prove out to be cost-effective, we will move one bureau out of our current space and allow these new
10 people to come in. We will have a new building built for the Department of Conservation and Natural
11 Resources in south Carson City. The bids are currently out for that and we are expecting to be in that new
12 building probably in July 2005. So our space situation is temporary and short-term until we can get into our
13 new building.

14
15 Commissioner Reavis asked would the new building contain space for a little bit of expansion?

16
17 Allen Biaggi answered yes. In fact they're looking to sublet some of the space out to smaller agencies so that
18 as our department grows we'll essentially evict those folks and move into that space. That's exactly what
19 happened to us at the Sawyer Building in Las Vegas. We were there for three or four years, space needs for
20 the larger agencies became critical and we were asked to leave.

21
22 Vice Chairman Coyner asked can we touch on the appeals just briefly?

23
24 Allen Biaggi answered sure.

25
26 Vice Chairman Coyner asked we know we had Gold Quarry last week. Correct? And we believe that the
27 mining company prevailed as it was told to me.

28
29 Allen Biaggi answered that's correct. Gold Quarry was being issued an NPDES permit by our agency. That
30 permit was placed on appeal by Great Basin Mine Watch. This is an appeal that has taken quite a long
31 period of time for a variety of reasons and ultimately Great Basin Mine Watch filed an action to compel us to
32 hold the hearing and that wasn't really necessary for the court to order that because we had the hearing
33 before it was necessary to. In any event, a panel of the State Environmental Commission met that consisted
34 of Mr. Crawforth, Mr. Robinson and Mr. Henderson. There was a field trip and a day's worth of hearings
35 and the Division prevailed on all counts on that. We would like to point out that in Commissioner
36 Crawforth's concern on the monitoring points along the Maggie Creek, we have been working with the
37 mining company and we have some proposals in mind and we will be getting you and the rest of the
38 Commission information on those monitoring activities.

39
40 Vice Chairman Coyner asked no appeal to the courts on that one yet?

41
42 Allen Biaggi answered not as of yet.

43
44 Vice Chairman Coyner asked and then the appeal on Lone Tree?

45
46 Allen Biaggi stated a panel ruled on Lone Tree earlier this year and again the Division prevailed on that and
47 Bill maybe you, you're more versed in what actually is happening with that appeal than I am.

48
49 DAG Frey stated we filed the record of the hearing with the court. I can't remember the actual dates. I think
50 that Great Basin Mine Watch has to file their opening brief by the end of the month or early July and then we
51 have 30 days after that in which to file our opposition and they'll have another 20 days to do a reply after
52 that.

1 Vice Chairman Coyner stated as always we're hoping that we're creating a bullet-proof record for the court
2 so that we can be defensible in our decisions. What is the status of the Western Elite situation?
3
4 DAG Frey stated well there is something pending. On a separate matter, a Writ of Mandamus was filed by
5 Western Elite to compel the Division to issue a ruling on their application for a landfill permit. Oddly
6 enough it got to us that Writ was filed even though we had communicated with them that they would be
7 receiving a reply in short order. I think the decision on the application for a landfill permit is to go out
8 tomorrow in the mail. So that should resolve the Writ and I haven't, you'll have to excuse me, Susan Gray
9 was sort of taking the lead on the rest of it. She, as many of you know, a couple of weeks ago broke her
10 ankle and she's been out. She's expected to return to the office late next week.
11
12 Vice Chairman Coyner asked if they qualify as a landfill would that then take away our concern from what
13 we were hearing on the appeal?
14
15 Allen Biaggi answered no, I don't think so.
16
17 Vice Chairman Coyner asked would that vacate that? Or would we still have an issue with it?
18
19 Allen Biaggi answered we still have an issue with them, a very large issue.
20
21 Commissioner Ricci asked so there still will be a hearing at some time?
22
23 Vice Chairman Coyner stated the judge said I didn't have authority to tell them, I think the judge basically
24 told me that I didn't have authority to bring them to the hearing date. That was outside my authority.
25
26 DAG Frey stated I think the next step in regards to that will be filing something in court. There may be a
27 hearing on the decision regarding the landfill permit, however. But that's in the future.
28
29 Commissioner Crawford stated based on the last two hearings that we've had with Great Basin Mine Watch,
30 I think all the panel members were concerned that the rules this Commission has for holding such hearings
31 and the order of those is correct in some cases, but it's very difficult and I think confusing for all the parties
32 in other cases and what we end up with is basically the Division defending themselves in front of a panel for
33 an as yet unspecified charge. So it's basically handled (inaudible) here, they're proving themselves innocent
34 before the charges have even been stated. So I've asked Mr. Biaggi if he wouldn't take a look at bringing
35 before us sometime this fall when we can do permanent regulations a consideration for at least allowing the
36 flexibility to hear those cases either way. Because right now you find yourselves, I think Commissioner
37 Henderson and Robinson last week kind of scratching their head about, "Okay now why are they defending
38 themselves against this? We haven't heard what's occurred yet." So I think these rules are somewhat old
39 and need to be at least allowed the flexibility to have these hearings. Obviously, if they're an appeal hearing
40 of a violation, then the rules that we have now apply. But for some of this new way of doing business we
41 need to make some changes.
42
43 Allen Biaggi stated I agree. We are going to take a look at it. I've already had some preliminary discussions
44 with Bill about it and how we can modify the situation.
45
46 Commissioner Ricci asked Allen you mentioned that bill where you got the authority to add another \$4
47 million to the, was that for a community water system or a community sewer system?
48
49 Allen Biaggi answered it's for a community sewer system.
50
51 Commissioner Ricci stated you said community water system and it really confused me.
52

1 Allen Biaggi explained \$2 million is for a community sewer system and \$2 million is for community water
2 systems. We have certain bonding capacity already within the program. SB 200 addresses Spanish Springs
3 and our demands that that community do something about the nitrate problem in groundwater. This money
4 would be coupled with federal money and private money to assist them in putting in a collection system in
5 lieu of the septic systems. SB 233 increases the bonding capacity by \$17 million of the program in total in
6 order to provide grants to drinking water systems throughout the State and water conservation efforts.
7
8 Vice Chairman Coyner called for further questions. There were none. He called for any other comment,
9 public or otherwise. There were none. He then presented David Cowperthwaite with a certificate of
10 appreciation.
11
12 **The meeting adjourned at 12:35 p.m.**

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