

1 **STATE ENVIRONMENTAL COMMISSION**  
2 **Meeting of November 19, 2002**  
3 Clark County Building Department  
4 Las Vegas, 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

**MEMBERS ABSENT:**

Melvin Close, Chairman  
Demar Dahl  
Steve Robinson  
Joey A. Villaflor

17 **Staff Present:**

18 Deputy Attorney General Susan Gray, Deputy Attorney General  
19 David Cowperthwaite - Executive Secretary  
20 Sheri Gregory - Recording Secretary  
21  
22

23 Vice Chairman Coyner called the meeting to order. He noted that the agenda had been properly noticed in  
24 compliance with the Nevada Open Meeting Law. He introduced the Commission members, including  
25 Commissioner Henderson, acting Director of the Department of Agriculture. He updated the Commission on  
26 Commissioner Iverson's condition.  
27

28 **Agenda Item I. Approval of Minutes from the September 11, 2002 meeting.**

29  
30 **Commissioner Crawford motioned to adopt the minutes from the September 11, 2002 meeting.**

31  
32 **Commissioner Reavis seconded the motion.**

33  
34 **The motion carried unanimously.**

35  
36 Vice Chairman Coyner moved to **Agenda Item II. Regulatory Petitions, Petition 2002-09**  
37

38 **(Petition 2002-09 (LCB R103-02)** is a permanent amendment to NAC 445B.001 to 445B.395, the air pollution  
39 control program. The amendments provides for a new Class I Operating Permit to Construct Program, an  
40 amendment to NAC 445B.327 for a late fee assessment for annual fees and minor technical corrections to the  
41 regulations. These amendments reorganize and consolidate the structure of the Class I, II and III operating  
42 permit regulations and provide clarification of the methods of calculating heat input. A new Operating Permit  
43 to Construct program has provisions relating to definitions, applicability, application requirements, content of  
44 the permit, timelines involved in the permit, and renewals. NAC 445B.22097 is amended to clarify the eight-  
45 hour Ozone standard and the addition of a 2.5 micron particulate standard. NAC 445B.221 is amended to add  
46 various subparts on Hazardous Air Pollutants of the Code of Federal Regulations, NAC 445B.327 is amended  
47 to provide for new Operating Permit to Construct Fees, amendments to Surface Disturbance Fees and  
48 replacement and change of location permit fees. The Prevention of Significant Deterioration Fees is  
49 consolidated in NAC 445B.327, and a penalty amount for late fees is included. NAC  
50 445B.291,445B.300,445B.303, 445B.313, 445B.323, and 445B.335 are repealed.)

1 Mike Elges introduced himself as chief of the Bureau of Air Pollution Control. He stated I'm here this  
2 morning to present a summary of the proposed changes to the air quality regulations contained in NAC  
3 445B.001 to 3485. The agency held workshops in Reno, Elko and Las Vegas last August to solicit  
4 comments and input to the proposed revisions. We have had several meetings with interested parties to  
5 address concerns and comments related to these proposed amendments as well.

6  
7 In March we asked the Legislative Counsel Bureau for assistance in reorganizing the air quality regulations.  
8 The regulations have evolved such that the different classes of permits and associated requirements have  
9 been blended together so much that it makes them difficult to use and generally hard to read. For this reason  
10 we worked with LCB to restructure the air quality regulations so that the provisions could be more logically  
11 organized. The most current version of the regulations has been partially reorganized to better fit this mold.  
12 But some changes are necessary or need to be completed to fulfill this effort. Several of the proposed  
13 amendments contained in this package are there to complete this process.

14  
15 The changes being proposed can be separated into four categories. The first are changes related to the  
16 reorganization. The second are amendments for a proposed construction permit program for major sources.  
17 The third are proposed amendments that would provide for a late fee for sources that fail to pay fees or pay  
18 their annual fees on time. And last, there are a number of technical corrections to the provisions that include  
19 updated federal requirements and changes to the ambient air quality standards provisions.

20  
21 Unfortunately the proposed amendments don't flow in the same order. For that reason I think it's more  
22 efficient if I quickly go through the sections and point out the primary reasons for the subsequent changes in  
23 each of the sections.

24  
25 Starting with sections 1 through 7 you'll find proposed regulations that provide for an optional construction  
26 permit program for major sources, or what's called the Operating Permit to Construct. Up until about eight  
27 years ago the bureau issued both operating permits and construction permits. Construction permits allowed  
28 sources to construct and begin operation. Once operations commenced, the facility was responsible for then  
29 applying for the longer-term five year operating permit. With the advent of the Clean Air Act amendments  
30 of 1990 and the resulting Title V operating permit program requirements, Nevada integrated its construction  
31 and operating permits, so they were combined into one operating permit. It was believed at that time that  
32 integrating the two would result in a reduction in applications being submitted because an applicant would  
33 only need to go through the process once.

34  
35 However, what we've determined is that trying to incorporate these two separate concepts really doesn't  
36 work real well in practice. There are a number of problems that come about when we try to integrate both of  
37 those processes. In many cases, the bureau and the applicant spend a lot of time developing longer term  
38 operating permit requirements necessary to fulfill the Title V requirements, only to have to revise them due  
39 to changes in design, construction or in commencement of operation of these newer sources. For this reason,  
40 we're proposing to revise the current regulations to provide an alternative approach that separates the Title V  
41 operational requirements from those of the short-term construction and initial operational requirements that  
42 apply to these facilities. The federal Title V provisions clearly provide for this type of approach as many  
43 states utilize this two-step permitting process. The changes proposed in Sections 1 through 7 are tailored to  
44 this concept while retaining the requirements for evaluating the effects of these sources on the quality of  
45 ambient air. New sources or source modifications all must still be evaluated as they are currently. So the  
46 evaluation process really is unchanging; we're simply separating these two issues from construction to longer  
47 term Title V operational requirements. As I stated earlier, this is an optional program and the proposed  
48 regulations still allow the facility the opportunity to go directly to a Title V or a Class I permit if the  
49 applicant chooses to do so.

50  
51 I wanted to briefly discuss the application processing timelines and the fees associated with the proposed  
52 construction permits. Section 6 contains the application processing timelines for the two types of  
53 construction permits that we'd be issuing. For a major source that is not subject to the federal prevention of

1 significant deterioration or PSD regulations, the bureau would have a maximum of 90 days after the  
2 completion date of the application to either issue or deny the permit. For a major source that is subject to the  
3 PSD regulations, the bureau would have 180 days to issue or deny that permit. The other thing worth noting  
4 I think here as well is that all construction permits would have to go to public notice for 30 days for both  
5 public and EPA review.

6  
7 Starting on page 66 Section 32 contains the application fees for the construction permits. This section of the  
8 regulations was also revised as part of the reorganization of the regulations so I'll touch on a couple of the  
9 other changes there in just a minute. The fees for the construction permit applications are again separated  
10 into two categories. Subsection 1 details the fees for the sources that are not subject to the PSD provisions,  
11 while Subsection 3 contains the fees for the sources that are subject to the PSD permitting requirements.  
12 These fees are based on the current fee structure for Class I permits. This was done because we do not  
13 anticipate any significant reductions in the number of applications that would be submitted, nor the amount  
14 of time necessary to evaluate these applications. Again, we're really just separating these issues and don't  
15 see any significant changes in the number of applications or the evaluations that we'll be doing.

16  
17 There's one correction that I would like to propose here. On page 68 under Section 32 Section 3(g).  
18 Subsection 3(b) establishes the fee for a major modification and it's duplicated in 3(g). I'd like to propose  
19 that we strike 3(g) to get rid of that duplication. I believe it's on page 68, at least of the copy that I have. Let  
20 me double check.

21  
22 Commissioner Johnson asked could you explain on Section 32(d) which is (d) and (e) on the top of page 67,  
23 the difference between modification and revision?

24  
25 Mr. Elges answered the subtle distinction here between a modification and a revision is a modification is a  
26 physical or operational change that is taking place at the facility or on a piece of equipment. A revision is  
27 actually a change in the permit itself. So we've tried to be consistent in keeping that terminology separate. I  
28 think you'll see the same terminology in the balance of the reorganization of this regulation as well to keep  
29 those issues clearly separated.

30  
31 There's also one other change. Back on page 5 in Section 5(2)(d)(2), this section should read, "The  
32 revoking, reissuing, or the terminating," rather than, "the revoking and reissuing." So I'd like to propose that  
33 we strike the "and" and place a comma there. That is an artifact of the way LCB rewrote our existing  
34 provisions and we'd like to correct that if we could. I think that covers the majority of the proposed  
35 amendments regarding the operating permit to construct provisions.

36  
37 Sections 8 through 18 are proposed amendments that are a result of the reorganization of the regulation.  
38 Most of these changes are necessary to break out the requirements that apply to different classifications of  
39 applications and permits. Most of this language comes from parts of the existing regulations.

40  
41 Section 19 contains a revision to the definition of an operating permit. The amended language incorporates  
42 the permit to construct or what's defined as the operating permit to construct. So this is how we're bringing  
43 that definition under our existing operating permit program.

44  
45 Sections 20 and Section 27 held until the end.

46  
47 Section 21 on page 26 contains provisions that are adopted by reference. We're proposing to update both of  
48 these sections as there have been a number of provisions that have become final rules since this was last  
49 updated. Most of the provisions being added here are federal new source performance standards and Part 63  
50 Hazardous Air Pollutants or the new MACT criteria.

1 Sections 23 through 24 are being amended to incorporate the construction permit requirements and other  
2 requirements for having to obtain a permit and the violations provisions. So that's a little bit of a tie back to  
3 the construction provisions.  
4

5 Section 25 on page 45 is being amended as part of the regulation reorganization as well. Class I permit  
6 requirements are being removed as they've been moved to Section 8.  
7

8 Section 26 on page 50 is being amended to clarify that this section applies for Class I permits. Subsections 4  
9 and 5 are being removed as they are moved to Section 11. Again, this has to do with uncoupling the different  
10 classifications of permit requirements and putting them into appropriate sections so the regulations are more  
11 logically organized.  
12

13 Sections 28 and 29 are being revised to include the requirements of Sections 10 and 14. Again this has to do  
14 with the reorganization of the regulations and existing requirements for determining the effects of air quality  
15 for Class II and Class III sources.  
16

17 The new language being added in Subsection 1 of Section 30 has to do with the term of a permit to construct  
18 versus that of an operating permit. We're proposing to add this language to make it clear that the term of the  
19 permit to construct, as it's described in Section 7, is not the same as the five-year term of an operating  
20 permit. At some of the workshops that we had there was concern about the clear understanding of the term  
21 of a construction permit versus that of the five-year operating permit. So we proposed to put this language in  
22 there to make sure there were no misunderstandings.  
23

24 Section 31 at the bottom of page 65 is part of the reorganization of the regulations and separates Class I and  
25 Class II renewal application completeness time frames.  
26

27 Section 32, I think that I've already discussed the proposed changes for the proposed construction permit  
28 program. The other element that's significant here is the proposed late fee. Over the last three or four years  
29 we've seen a substantial increase in the number of sources that have failed to pay their annual fees on time. I  
30 think the bureau sought late payment on almost 100 facilities just this last year alone which is about 1/5 of  
31 the total facilities that we have permitted. The late fee that we're proposing here is 25 percent of the amount  
32 of the fees that are due. It should be noted as well that if the facility is negotiating the fee with us, which is  
33 not uncommon because of some of the complexities going through trying to calculate the emissions fees, that  
34 we obviously would not invoke that penalty. This is really designed for sources that just flat ignore paying  
35 their fees.  
36

37 Sections 34 through 41 are being amended, again, as part of the reorganization and include some of the new  
38 section's references.  
39

40 Section 42 is self-explanatory. This is the balance of language that would be repealed after all the changes  
41 and fortunately there's not very much, but a little bit of it actually drops away.  
42

43 Finally, Sections 20 and 27. Section 20 is the NAC provision that contains the state and federal ambient air  
44 quality standards. We're proposing to correct a number of technical discrepancies that have been introduced  
45 into the tables over the years. To correct the problem, we felt that it was easier if we just struck the whole  
46 table and try to introduce the corrected version, which I think begins at the bottom of page 23.  
47 Unfortunately, we've noted that there have been some problems with the LCB version of the proposed  
48 regulations. Therefore, in order to correct these deficiencies, I'd like to ask the Commission to consider a  
49 separate exhibit that contains the corrected revisions to the table for Section 20 and also the corresponding  
50 amended language in 27.  
51

52 David Cowperthwaite stated this is Exhibit 9.  
53

1 Mr. Elges we're proposing to make a number of technical corrections to the air quality standards table. The  
2 exhibit that we presented shows all the corrections that we'd like to incorporate and I think this pretty much  
3 takes care of some of the typos that have been introduced over the years. There have also been a number of  
4 areas where numbers have had decimal places added to them inappropriately. We're trying to correct a  
5 number of those issues. If need be I can go through a little bit more detail, but I believe what we've provided  
6 in this exhibit is the correct version of what we'd like to see as the final package.  
7

8 Commissioner Reavis asked these essentially change no standards there?  
9

10 Mr. Elges answered that's correct. What I think has occurred is subtle revisions have been put into place as  
11 the regulations have been modified over the years. I think it's just come about when LCB is helping us out a  
12 little bit too much and when we say 9 sometimes they put 9.0 in there and that can radically change what's  
13 going on. What we're trying to do is correct those deficiencies and get back to what the standards are. This  
14 also makes them consistent with the federal standards on both sides of the tables.  
15

16 Mr. Elges stated we're also proposing to remove the 8 hour ozone standard and the PM 2.5 annual and 24  
17 hour standards from the table. We've had a number of meetings with the industry and interested parties that  
18 have some concerns about how these standards will be implemented and lacking implementation guidance  
19 for the permitting processes, we're introducing these requirements into the decision making for issuing or  
20 denying permits. We felt it better at this point to go ahead and propose to just strike or not introduce these  
21 into the table at this point in time. We'd like to come back to the Commission once we get a little further  
22 along in the guidance process and then we'll reintroduce these into the table.  
23

24 Some confusion has come about as to whether the standards really apply. I think we certainly agree that they  
25 do and we are currently monitoring for these pollutants. I think we have some folks here who could certainly  
26 talk to that a little bit better than I can. But as far as the implementation of these provisions being a  
27 requirement for issuance or denial of a permit or being included in the environmental evaluation, guidance  
28 has not been provided by EPA as of yet and we would still need to go through separate rule making to  
29 incorporate that into these provisions to make that part of our permitting process. That's what we're  
30 proposing to do at a later time. That's essentially why we're proposing to not provide those in the table  
31 today.  
32

33 Commissioner Ricci asked so then would you scratch those lines on page 25 about the note of the inclusion  
34 of the national PM 2.5 standard?  
35

36 Mr. Elges answered that's correct. That's located on the next page of that same exhibit. We're proposing to  
37 strike the language that coincides with the footnotes for the 8 hour ozone and the PM 2.5 as well as the note  
38 on page 3.  
39

40 Commissioner Johnson stated there are other references to the table and these references basically build what  
41 you include and evaluate in the permit process.  
42

43 Mr. Elges stated that's correct.  
44

45 Commissioner Johnson asked and in striking these we're saying that we aren't going to consider the 8 hour  
46 ozone or the 2.5 at this time?  
47

48 Mr. Elges answered for the environmental evaluation, which is one of the main requirements for decision  
49 making for issuance or denial of a permit. That's correct.  
50

51 Commissioner Johnson asked what happens to the issued operating permits or permits to construct next June  
52 or whatever date that we adopt the new standards? Will these operating permits then have to come back to  
53 you and reevaluate these on these issues or wait until the five years?

1 Mr. Elges answered no they wouldn't. We implemented that when we converted to the PM 10 standard by  
2 waiting until either the first modification or the first renewal point of that permit. So they were picked up in  
3 the cycle accordingly.  
4  
5 Commissioner Johnson asked then if you applied and were permitted last month you would have had to  
6 address these two issues?  
7  
8 Mr. Elges stated I'm not sure I understand what you mean.  
9  
10 Commissioner Johnson asked well there is an existing, or there isn't an existing language in the table on PM  
11 10, PM 2.5, nor 8 hour ozone?  
12  
13 Mr. Elges answered there is not.  
14  
15 Commissioner Johnson stated oh, okay. This was a proposal that you were doing but you don't have the  
16 guidelines to implement at this time?  
17  
18 Mr. Elges answered yes. Let me clarify so I'm sure we're saying the same thing. The existing standards  
19 table does not include the 8 hour ozone or the 2.5 standards. It was proposed in the LCB version, I'm asking  
20 that through this exhibit that we strike that request for those two particular standards. So there was never a  
21 regulation that contained those standards in place.  
22  
23 Commissioner Johnson asked and from a timeline when you're going to be depending upon EPA to issue the  
24 guidelines, so we really don't know whether it's going to be next year or this decade?  
25  
26 Mr. Elges answered right. Again, we're kind of at the mercy of waiting for guidance before I could give you  
27 a better answer on that.  
28  
29 Commissioner Ricci asked can I just follow up on that?  
30  
31 Mr. Elges answered sure.  
32  
33 Commissioner Ricci asked if it's a national standard, didn't they base it on something?  
34  
35 Mr. Elges answered explained the 8 hour ozone and the 2.5 standards are federally recognized standards that  
36 do apply. We are required to ensure that those standards are met air quality-wise throughout the state, i.e.  
37 our monitoring and sampling programs go out and we ensure that those standards are being achieved. That's  
38 a little bit different issue than utilizing new standards and incorporating them into our provisions for making  
39 decisions on the issuance of permits. Some of the problems that we're running into is that there is no data  
40 available for calculating PM 2.5 factors for processes. There's very little data that's been provided that we  
41 could use or incorporate into these environmental evaluations that we do. So it's very difficult to try to bring  
42 a new pollutant in without the guidance that's set forth nationally to make a decision of issuance or denial of  
43 a permit. So that's kind of what we're trying to uncouple here and it's becoming kind of a bailiwick through  
44 this table. But, simplistically the way we would like to approach it is just to bring that issue back when  
45 we've been afforded the time to look at the guidance and figure out how we're going to incorporate those  
46 provisions into these regulations.  
47  
48 Commissioner Johnson asked has US EPA begun the process of adopting guidance documents? I mean  
49 further than simply saying we're going to?  
50  
51 Colleen Cripps introduced herself as chief of the Bureau of Air Quality Planning. She stated EPA is  
52 currently working on that guidance. They wanted to do it in sequence with the 8 hour ozone guidance.

1 That's supposed to be out by June of 2003 and then they're anticipating that the PM 2.5 guidance should be  
2 out within a year after that.

3  
4 Mr. Elges stated there was one last subtle change I wanted to make sure that we got as part of this exhibit if  
5 we could. On page 4 of the exhibit, subsection 2, we are proposing a subtle language change here that  
6 clarifies that the Nevada standards contained in the table are the standards that need to be included in an  
7 environmental evaluation. This has been somewhat problematic historically because both the Nevada  
8 standards and the national standards are depicted in those tables. So when working through some of these  
9 changes this is one of the things that we received some discussion on and several comments. So we'd like to  
10 clarify that by making this change as well.

11  
12 Commissioner Johnson asked I've always had difficulty with visibility being in the table and I believe there  
13 is a section that exempts that from being a hard review item in the permit process?

14  
15 Mr. Elges answered I'm not sure that there is a specific exemption anywhere. Visibility has not been  
16 something that there is a specific procedure set up for evaluating as far as what an applicant must provide in  
17 an environmental evaluation.

18  
19 Commissioner Johnson stated I think this issue is problematic. I thought in originally reading the document  
20 that it had been addressed, but I think that it leads to confusion at least from my standpoint of reading that  
21 visibility is one of the items that you need to address in an operating permit and I certainly wouldn't know  
22 how to do that or go about it and I suspect you or your employees would find it difficult also.

23  
24 Mr. Elges stated there are a couple of answers. I think fundamentally I would generally agree. There are  
25 ways to address visibility and actually there's quite a bit of that provided in the PSD regulations and  
26 guidance that's out. I'm not trying to suggest that that's an appropriate procedure for what we're trying to do  
27 for the vast majority of these provisions. This might be a good issue to certainly explore in a little more detail  
28 because I really don't know a lot of the history behind how this was originally incorporated into these  
29 provisions and would tend to agree that there is some question as to whether we need it and what its purpose is.  
30 I'm I afraid I just can't shed much light on that so I'm not going to be able to give you much insight from an  
31 outside perspective on that.

32  
33 Commissioner Johnson stated I have significant interest in this issue and I would like to see it on your agenda  
34 to revisit sometime in the future. When you're dealing with, perhaps the 8 hour standards or the PM 2.5  
35 particularly.

36  
37 Mr. Elges stated okay. And just so I understand your particular issue is with how the visibility should be  
38 determined? Or whether it should be included as a requirement for an operating permit or a permit to  
39 construct?

40  
41 Commissioner Johnson stated yes. Both of those issues.

42  
43 Commissioner Ricci asked is there such a thing as a background visibility?

44  
45 Mr. Elges answered yes.

46  
47 Commissioner Ricci stated I mean, I guess when you address Mr. Johnson's questions you'll, because how  
48 much is too much already that's there and how do you say, "Well, now in the operating permit we're only  
49 going to allow 5 miles or something?" That seems like almost an impossible task.

50  
51 Mr. Elges stated I can tell you it's very challenging. I've done a couple of these where we look at visibility  
52 impacts on Class I areas, primarily for the prevention of significant deterioration analyses that we do for  
53 larger sources. It's a fairly complex process that you go through to evaluate visibility. Obviously that's

1 information that we can pull together and work through to respond to the general questions that are being  
2 asked and, unfortunately I don't have a lot of information that I can share with you. I just don't know a lot of  
3 the history behind those provisions.  
4

5 Ms. Cripps stated Commissioner Johnson when you start talking about looking to see what the natural  
6 background is statewide, I think this is a very, very complicated issue. We have been trying to work through  
7 some of those issues through the Western Regional Air Partnership, just looking at the Class I areas not  
8 background in general, and it's required resources that we basically would not have to be able to come up  
9 with those background numbers for general permits and for general background in the rest of the State. It  
10 would be very difficult for us to get that information and I don't think we should be assuming that we can.  
11

12 Commissioner Johnson stated in part I wish to see the issue of having a visibility standard that I think  
13 ostensibly needs to be addressed in the permit process by the language that we have in the regulations.  
14 Perhaps we wish to remove that. I would not wish to see that happen. I would rather see you get the  
15 resources to evaluate what I think is probably in the future when you deal with 2.5 a pending issue for it. But  
16 I'm not trying to accelerate it, but I know that it is an area (inaudible).  
17

18 Vice Chairman Coyner stated I would ask the same about the other two items, the other two pollutants that  
19 are on the list that we set a Nevada standard for, but there is not a national standard for. That being ...  
20

21 Mr. Elges asked that being H<sub>2</sub>S?  
22

23 Vice Chairman Coyner answered yes exactly. Hydrogen sulfide and the ozone Lake Tahoe Basin number  
24 90. Is there some background there that you can help me with or a reason that those particular pollutants  
25 were established in Nevada for Nevada standards and not a national standard?  
26

27 Mr. Elges explained that would be something I'd have to look into because I just don't know the basis behind  
28 the origination of these requirements. I don't go back that far, I'm sorry.  
29

30 Vice Chairman Coyner stated I understand. It shares that characteristic with visibility. That's why I'd kind  
31 of lump it into that same inquiry.  
32

33 Mr. Elges asked so if we look at the ozone standard for the Lake Tahoe Basin, hydrogen sulfide and the  
34 visibility from those aspects, would that address your concerns?  
35

36 Vice Chairman Coyner answered correct.  
37

38 Commissioner Johnson stated a point of reference, I believe the ozone standard for Tahoe is probably a bi-  
39 state issue. We have California playing part in that determination for the H<sub>2</sub>S. I don't have the slightest idea  
40 where that came from.  
41

42 Mr. Elges stated the only thing that I might be able to lend there is I had heard when I first started with the  
43 agency H<sub>2</sub>S was a pollutant of concern primarily from geothermal processes and I'm not sure, but I would  
44 hedge to bet that that's probably where some of that came from. But again we'll be happy to take a look at  
45 that and see what we can find out.  
46

47 Commissioner Crawford asked if it is your intention on this most recent handout to take out PM 2.5, on page  
48 2 of this, by taking out the language other than for PM 2.5 are you not actually making yourself consider 2.5?  
49

50 Mr. Elges answered well I wouldn't be opposed one way or the other to anything that you might read into  
51 this. Our intent is not to do that, obviously. Our intent is to make it clear that the 2.5 and the 8 hour ozone  
52 would not be required as part of the application review process or the environmental evaluation.

1 Commissioner Crawford stated it seems to me if you scratch the other than PM 2.5 you're making yourself  
2 consider it. But I'm not sure.  
3  
4 Mr. Elges stated I don't believe that does that.  
5  
6 Commissioner Crawford stated that's good for me.  
7  
8 Mr. Elges stated I would say that it does not. At least not in my reading of that. I think that was all of the  
9 information that I wanted to go through and I'd be happy to answer any questions.  
10  
11 Vice Chairman Coyner called for questions.  
12  
13 Commissioner Johnson stated you mentioned the issue of decimal points and rounding errors. I'm looking at  
14 carbon monoxide less than you have 9 ppm is replacing 10 mg per cubic meter. More specific I guess is the  
15 next one and that's greater than or 6 is replacing 6.7, 6.7 infers that it's rounding off to the 10th of an mg or 6  
16 without anything is a whole significant figure less accuracy. It's simply that 6.7 is a bogus number? I  
17 suspect you could probably get accuracy to that level.  
18  
19 Mr. Elges stated it's interesting because you're about the second person that asked me almost that identical  
20 question. If you go back on page 22 of the packet, and this is where I think we've introduced a little  
21 confusion, the strikeout language on page 22 is what the current regulations say. What we had proposed was  
22 to put in the 6.7 mg per cubic meter, which is not what we want. That unit just doesn't work for what we're  
23 trying to go to. What we're actually trying to get back to is clarifying that the 9 ppm versus the 9.0 ppm  
24 that's in the current rule is corrected because there is significant difference between 9 versus 9.0 because of  
25 the way the, in this case, CO is measured. So the only change that's being proposed for that particular  
26 pollutant is the change from 9 to 9.0. We're not trying to introduce the 6.7 which unfortunately got put in  
27 there in the proposed revised section.  
28  
29 Commissioner Johnson stated well the old section on page 22, that is the old that you strikeout has 6.67,  
30 which is even 7.0 which is even a greater error.  
31  
32 Mr. Elges stated I think that's a comma, not a decimal place. It's 6,670, is that what you're looking at?  
33  
34 Commissioner Johnson stated oh, okay.  
35  
36 Mr. Elges stated it's 6,670 micrograms per cubic meter.  
37  
38 Commissioner Johnson stated now you're getting even further rounding off to 9. I mean that infers four  
39 place accuracy and that's the existing. So you're functionally, 9 says that you could be 9.4 not be in  
40 violation. And you're inferring in your own table that you have accuracy that is four place and going to 1.  
41  
42 Mr. Elges stated again, what I'm saying is it was never correct. It was introduced as an error somewhere  
43 along the line because the correct reference to the method and the standard is 9, not 9.0.  
44  
45 Commissioner Johnson asked that is the reference, 9?  
46  
47 Mr. Elges answered that's correct. We're proposing to undo that mistake.  
48  
49 Commissioner Johnson stated I spent a professional career a number of years analyzing carbon monoxide  
50 and I can assure you that two or three place accuracy is attainable. The question of why we go through the  
51 single point I, but if that's the reference that exists in the federal statutes . . .  
52  
53 Mr. Elges stated that's it. That's correct.

1  
2 Commissioner Henderson stated I was wondering if you could characterize the results of your hearing  
3 process on this proposed regulation. Was there any substantial or notable opposition?  
4

5 Mr. Elges answered we held three workshops. The Reno and Elko workshops were fairly well attended. The  
6 Las Vegas workshop we only had one person show up. We've had a number of interested party meetings,  
7 industry meeting with major sources and industry representatives. As far as the construction permit program  
8 proposal itself I can't think of any real opposition that we've had. We had a couple of questions brought  
9 about in particular that dealt with not understanding the concept behind the construction permit program and  
10 I think once we discussed those issues and kind of laid out conceptually how the program was intended to  
11 function and how it works with the existing Class I or Title V provisions, best I can tell, we've resolved any  
12 concerns or issues that we had.  
13

14 Vice Chairman Coyner stated regarding late fees, I believe your statement was that about 1/5 of the total, 100  
15 of the 500 you had to seek out. What is the notification process? Do you bill them annually at the end of the  
16 calendar year? Is there a follow-up bill sort of thing, second notice? Pay now, or else face the dire  
17 consequences?  
18

19 Mr. Elges explained the initial invoice goes out and allows 30 days or more. We try to get it out in advance  
20 of that, but at least 30 days prior to July 1 because that's basically the drop-dead date for the fees to be  
21 submitted back to us. If we don't receive a response from that we send a certified letter with another copy of  
22 the invoice to the company and basically make them aware that we haven't received their fees and that they  
23 are past due. Then we'll go to a third letter if we haven't received it by that point where we basically say,  
24 "Look if you don't pay your fees, we'll look to revoke your permit or cancel your permit and that you can't  
25 operate without a valid permit in this State." So there's basically a three-step process in place right now that  
26 tries to get at that.  
27

28 Commissioner Johnson asked what section included the fees? I had a question earlier in what appeared to  
29 me to be a duplication and I needed some clarification.  
30

31 Mr. Elges answered Section 32.  
32

33 Vice Chairman Coyner stated on pages 66 through 70.  
34

35 Commissioner Johnson stated on 66 and then 68 I was confused with the Class I operating permit to  
36 construct the difference between \$50 and \$20,000. But I think I have that. Okay the difference is that if it's  
37 subject to CFR 52.21 then it's 20 and, okay. No questions.  
38

39 Vice Chairman Coyner asked what's the relative balance of the 500 permittees between those two on the Class  
40 I's?  
41

42 Mr. Elges answered Class I is a very small group. It's a little under 30 right now.  
43

44 Commissioner Johnson stated I think the question is \$50,000 versus the \$20,000, subgroups of Class I.  
45

46 Mr. Elges asked is that your question? I'm sorry.  
47

48 Vice Chairman Coyner answered yes. The division between subject to CFR 52.21 versus not and in Class I  
49 how does that class break down?  
50

51 Mr. Elges explained that class breaks out, boy don't hold me to these numbers, but it's probably less than 20  
52 percent actually in the PSD side. It's a very small portion. I don't know right off the top of my head.  
53

1 Vice Chairman Coyner asked which is the bigger fee?

2  
3 Mr. Elges answered that's the larger fee. That's correct.

4  
5 Commissioner Johnson asked somewhere there, by federal statute dry cleaners, these sort of facilities are  
6 included under Class I. Is that right?

7  
8 Mr. Elges answered right. When I discussed the proposed updates to the Part 63 and Part 60 provisions that  
9 we're adopting by reference, I think if you'll look in there you'll see a number of the Part 63 provisions that  
10 include the dry cleaning facilities and a number of other smaller industries that are being impacted by  
11 proposed or final regulations for the hazardous air pollutants or the MACT provisions.

12  
13 Commissioner Johnson asked and they're going to be tagged \$20,000?

14  
15 Mr. Elges answered I spoke at the last hearing a little bit about us working with the landfills because they  
16 were subject to a situation like this where the provisions got changed and our current fee structure says that  
17 they have to submit an application for basically a \$20,000 Class I application filing fee. We're still working  
18 to resolve not only that issue, but we recognize that there's a whole litany of smaller industries that are being  
19 on this hit list, if you will, for regulations that are required to go through the Title V permitting process.  
20 We'll be coming back to this Commission with a proposed fee adjustment that addresses that particular issue.  
21 That's just not something that I've been able to get pulled together as of yet though. But currently if we had  
22 an application for a major source, the fees that you see in this section are the ones that would apply.

23  
24 Commissioner Johnson asked in renewal fees for a dry cleaner, are they going to be hit with \$5,000?

25  
26 Mr. Elges answered that's correct. The way this is set up right now. Again, we recognize that that's  
27 something that's probably not going to be a workable and are trying to get a grasp on not only how many  
28 industry-types we have, but the complexity of the permits that we will or will not have to issue for those  
29 sources. And like I said we'll be proposing to bring amendments to the fees to address exactly that.

30  
31 Commissioner Johnson stated but if you come in tomorrow to . . .

32  
33 Mr. Elges stated as far as the dry cleaners are concerned, they are actually deferred from the requirement to  
34 obtain a Title V permit until the 2004 calendar year. There are actually some deferrals on a lot of these  
35 regulations that are being adopted and I don't believe we have any that are in the situation of tomorrow, you  
36 know, they would be stuck with that particular situation. So, to the best of my knowledge we're out in front of  
37 it well enough that we shouldn't be putting sources in that predicament. But, again, given what I know today.

38  
39 Vice Chairman Coyner called for further questions. There were none. He then moved to admit Exhibit 9 and  
40 read Exhibit 10 into the record in short form. He stated Exhibit 10 is a communication on this agenda item  
41 from Holland and Hart, attorneys at law, dated November 18th. It is written on behalf of Newmont Mining  
42 Corporation. There are about four paragraphs of comments, but I will give you the general  
43 acknowledgement that Newmont fully supports the BAQ's proposed new construction permit program. This  
44 two-tier program has worked well in other states and Newmont believes it will work equally well in Nevada  
45 and they encourage it to be finalized. That is on behalf of Newmont Mining Corporation. Exhibits 9 and 10  
46 were admitted.

47  
48 Vice Chairman Coyner called for further discussion. There was none. He then moved to public comment.  
49 He called upon Alan Dreesbach from Crescent Valley, Nevada.

50  
51 Alan Dreesbach introduced himself as representing the Nevada Mining Association. He stated I'm here  
52 basically to express the Association's support of the two-part permit program and BAQ's proposed  
53 regulations. NVMA has been involved as a stakeholder on these regulatory changes for about two years

1 now. We do believe that the regulation changes will lead to more efficient permitting, more timely permits  
2 for us. And we support them as written. I'd also like to take this opportunity to thank Colleen and Jean Paul  
3 and Mike for hearing the Association's concerns during the process of developing these regulations.  
4

5 Vice Chairman Coyner called for questions. There were none. He then called upon Tom Myers.  
6

7 Tom Myers introduced himself as executive director of Great Basin Mine Watch. We agree, more or less,  
8 with Nevada Mining Association. We do go along with the two-part permitting process. I do have a couple  
9 of concerns to raise so I'll not be 100 percent supportive. I'd like to thank Mike and Colleen and their staff.  
10 Just yesterday I went down and sat down with them and they cleared up the main questions that we had  
11 regarding the intent of these permits.  
12

13 The one concern that I have is the shortened time period for review that if there were a lot of permits to come  
14 forward at one time, I'm confident that the current staffing could deal with it, but that there would be  
15 pressure in the future to approved permits. I don't think that the current staff would do this, but I can tell you  
16 that there are several other states that colleagues of mine work in that have a great deal of, I mean it's just  
17 like projects are ram-rodged through. It doesn't happen here, but I'm concerned that future political changes  
18 potentially make the regulations that you're going to vote in today could become problematic.  
19

20 The one thing that we do have a small problem with is the changing of the standards from 9.0 to 9. The  
21 dropping of that, it's a round-off and I realize that Mike Elges said that it's referenced in the federal statutes.  
22 I just think we need to be clear about what that really means. I mean that's saying that if the average over an  
23 8 hour period is 9.49 and we do indeed have the ability to measure to 9.49, that .49 will be dropped and it  
24 will be in compliance. That's essentially saying that the measurements are exceeding the standard by about 6  
25 percent, but you're rounding it down so then they don't exceed the standard. I have a concern about that. If  
26 that's the way the federal statute is, I think we need to look into if that is the intent of the federal statute to  
27 be, because I think that that particular portion of this regulation does decrease the protection for primarily it  
28 effects the urban residents I would think. One way to look at this is, I mean you just think about standard  
29 sampling theory and if you take a measurement and it's 9.4 and there's an error bar around that  
30 measurement, there's a 50 percent chance it's greater than 9.4, there's a 50 percent chance it's less than 9.4  
31 and it's a greater than 50 percent chance that it actually exceeds 9. So I do have a concern. I'm not going to  
32 suggest that you vote against it at this time, but I think that we should look into that aspect a little bit further  
33 and maybe come back and revisit it in the future.  
34

35 Vice Chairman Coyner called for questions from the Commission. There were none. He asked staff if they  
36 wanted to respond to the issues about timing allowed for the permits that Mr. Myers raised.  
37

38 Mr. Elges stated I guess I don't share the same opinion as far as timing is concerned. I think a lot of that has  
39 to do with because I've been involved in seeing the existing sources, new sources, and modifications to Title  
40 V sources through the process over this 8 year period. Regulatorily there are a couple of paths that are set up  
41 in the current Class I provisions for how a facility could be modified. The most conventional route that's  
42 used is the minor revision provision. Essentially when you look at them on the surface they provide for a  
43 fairly rapid turnaround time as far as the agency is required to send the application to EPA. But the  
44 regulation is structured such that you get into this cyclic pattern of restarting the 45-day clock or the review  
45 period any time there's a change proposed to the draft permit. So what happens in practice is these things  
46 can go on for months and months and in some cases they have actually gone on for over a year. So as far as  
47 timing is concerned, from my perspective, I don't think that's really a big issue. I think that the way that  
48 these regulations are proposed that the time frames that are set are very achievable and certainly would not  
49 want to be proposing something that would get us into a situation where we couldn't meet those deadlines.  
50 So, I'm comfortable with them. I don't think they're a problem. I think you have to separate the provisions  
51 and how they are designed and how they are implemented versus maybe just the numbers that go with the  
52 times that are depicted.  
53

1 Vice Chairman Coyner stated then there's the opportunity for appeal.

2  
3 Mr. Elges stated absolutely. And you make a good point, through the public comment period if there are  
4 comments that are made, that can extend the time frame. If there's an appeal made, and history has shown  
5 for us that for Title V permits or a Class I program, those applications simply take a great deal of time.

6  
7 Vice Chairman Coyner stated there have been two lines of discussion now about the significance of the .0  
8 and so forth. Can you give me a feel for how Nevada's industries are performing. Are we flirting with those  
9 9 and 6? What has the history been?

10  
11 Mr. Elges stated I'll certainly give you my opinion from a permitting perspective and I think Colleen can  
12 probably talk a little bit better to the actual ambient monitoring side. From the permitting side, or using this  
13 as a tool for part of the environmental evaluation or decision making for whether we issue or deny a permit,  
14 that side is relatively simple. We look at it very holistically. It's a number that we analyze through a  
15 modeling analysis and if the number comes out of that accordingly it works for us. I'm not sure that it's  
16 quite as straight forward when you get down to the actual ambient monitoring side and that's where I guess  
17 I'd let her kind of chime in on that.

18  
19 Ms. Cripps stated that has been the case in a couple of instances in the counties where they have gone over  
20 9.0 on their ambient monitoring measurements and it has not been considered a violation of the standard.  
21 We have seen that and it has worked to their advantage to have to count those towards their attainment  
22 determinations.

23  
24 Vice Chairman Coyner called for further questions. There were none. He called upon Ken Mahal.

25  
26 Ken Mahal introduced himself and stated he resides at 3371 Storia Drive, is president of the Nevada Seniors  
27 Coalition. Mr. Chairman I have some questions on the air quality problems. Is that appropriate at this time,  
28 as they may apply in this new regulation?

29  
30 Vice Chairman Coyner answered yes. If you have a question specifically to the regulation and some of its  
31 language, certainly.

32  
33 Mr. Mahal stated well I think that Mr. Johnson brought up a very good comment about visibility tests. In my  
34 lifetime my eyes have generally told me when the air seemed to be pretty good and that's when I couldn't see  
35 haze every place I looked. So if that isn't measured in here, I have a question about that. I have a question  
36 on whether anything is being done about diesel emissions in all of this. I find that every time it comes before  
37 the legislature, the trucking industry seems to succeed in lobbying it off the table. It's been proven time and  
38 again that the diesel particulate mixed with the talcum-powder fine desert dust is something we breathe and it  
39 goes into our lungs and it stays there and that's been proven long ago in L.A. So I'm wondering if we  
40 haven't done that, when are we going to do something about that?

41  
42 I'm living proof today living here for 18 years that the lousy air quality has gotten to me. This voice didn't  
43 used to be like this. I'm under constant care at Mayo Clinic for respiratory problems and our best estimate  
44 here is that 2/3 of the seniors and probably half of the young folks in this valley are suffering from this  
45 problem of breathing diesel particulate combined with desert dust. And I brought something along that  
46 might enlighten you a little bit on how real the problem is. This is an ornamental globe on the side of my  
47 house in a protected area outside and that's what it looks like when it's clean. This is what it looks like  
48 days of exposure to this construction industry. And you have to take this picture at night in order to see it.  
49 During the daylight with 3,000 foot candles of sunlight, this talcum powder dust hardly shows up. But when  
50 I take it at night with a camera that shows you what we are breathing in this air every hour, every minute,  
51 every second of the day and it's getting worse. And all the regulations and all the enforcement that I've seen  
52 have done nothing to stop it. And if you test this you will find that there will be diesel particulate in it. That  
53 will be there.

1  
2 I'm a retired architect. At one time I had 650 architects and engineers representing my firm and we practiced  
3 in all 50 states of the United States. I was licensed in every state and some of the foreign countries. I come  
4 from the Midwest and I must tell you this is probably the most careless construction industry I have seen in  
5 my entire life and I was born and raised in that industry. I am 81 years old. So I'm here to testify from my  
6 qualifications and my background and experience. People don't seem to care. So I don't know if these  
7 regulations are going to change this or not. But I can tell you you can go to any doctor in this valley and you  
8 will find the respiratory problems here are second to none that they've ever seen and that isn't by accident.  
9

10 I have a question on enforcement. Quite some time ago I proposed what we need to do in enforcement on air  
11 quality here is as simple as what we did with the rubbish haulers and you see these big trucks with the half  
12 barrel tank on them to haul the rubbish, they passed a regulation some years back that they all had to have  
13 canvass covers. Well they all have the canvass covers, but they didn't cover the rubbish. Then they had to  
14 finally set a new regulation that said the operator of the vehicle is responsible to pull that cover back and if  
15 that operator does not do that, he loses his license. You know what? You don't see any uncovered rubbish  
16 anymore.  
17

18 I proposed a long time ago, Mr. Chairman, the same apply to the construction industry, the earthmoving  
19 industry. I proposed and I wish you'd consider it, that all operating engineers or whatever they choose to call  
20 themselves when they're handling the earthmoving equipment in any part of this State, should be required to  
21 know what's allowable and what's not allowable in the permit process. And if any time they are violating  
22 that PM 10 regulation, their license, they should be licensed under the knowledge of knowing that and if they  
23 don't stop it, don't report it, their license should be jerked. Mr. Chairman I suggest the air quality as far as  
24 construction sites would change almost over night. And that's a very simple thing to do. I think sometimes  
25 people in responsible charge in the corporations that are running these developments, whether it's the land  
26 owner or whether it's the subcontractors doing the earth moving are so far removed from what's actually  
27 happening on their site because they're looking at the next two or three or four proposals and they really  
28 aren't paying any attention to what's happening. So I suggest that before you close the books on this you  
29 consider different licensing.  
30

31 I at one time carried 54 licenses, which I was licensed in all 50 states and the Virgin Islands and the UK and I  
32 know that I had certain standards that I had to meet and I had to meet them at every state we did business in  
33 or my livelihood was taken away from me. They took my license away. I don't see why we can't require  
34 operating licenses for every person that operates this construction equipment and in that they must know the  
35 regulations and if they see they're in violation they call the "supe" and say, "Hey we are doing nothing until  
36 whatever it takes, whether it's watering down the (inaudible) whatever it takes to do it to correct it." I  
37 guarantee you a lot of respiratory problems in this valley and throughout this State will change. And you  
38 know it isn't just this part of the State, this part of the State is polluting a large part of the State every time  
39 the wind blows. That particulate flies for miles and miles, I mean when they tell us we get smoke from a big  
40 fire in China, don't you think we can get a little dust from southern Nevada up to Reno and Winnemucca and  
41 a few places like that? I think we can.  
42

43 The thing of it is, you can't see it unless you do a night check like I did. Every 24 hours a day we're  
44 breathing this no matter what you do. I know that there's been a lot issues about the PM 10 versus carbon  
45 monoxide. I don't understand the carbon monoxide's charges for the news media, maybe the news media  
46 doesn't really know what they're writing about, but they'll see this brown and yellow cloud and they'll say,  
47 "We've got to do something about carbon monoxide." Can't see carbon monoxide from all I know. But  
48 what's interesting, every time I go and have my vehicles checked for smog test I check and see how many  
49 vehicles in this State don't pass the smog test. I'm going to tell you what happens; 93 percent of all the  
50 vehicles pass the test. So that means 7 percent don't pass the test. I think there's something bogus going on  
51 here some place and I hope you regulators begin to look at this kind of thing and think about this. My wife's  
52 car has got 9,000 miles, it's 11 years old, a little Miata. It's cleaner than most new cars when I go in there,  
53 you know? My Mazda MPV, 11 years, never had a problem with it. So I'm really concerned that

1 somebody's giving us a propaganda spiel to take attention away from the real cause of the problem any place  
2 in this State and that's where we have the construction.

3  
4 Mr. Chairman I'm here to testify to you in all my years in the design construction business I have never in  
5 my life seen dirty diesels like we have here. And you know what I did? I took the time to check with all of  
6 the diesel manufacturers about why should a diesel smoke? You know what their answer is? A diesel  
7 shouldn't smoke. I said, "Well, why do they smoke?" Well, there are several reasons; number 1 is more  
8 than likely the contractor and the operator have set the pedal on the diesel so that it's like a high-speed racer  
9 taking off on these hot rods. When they push the pedal to the floor, they want that son-of-a-gun to take off.  
10 When they do that, they're going to lose 35 to 40 percent of the fuels' particulate into the air. I cannot  
11 imagine any circumstance in my entire life where I would run a business and I would waste 20 or 25 percent  
12 of the fuel to get a job done. That's not the way it works. But, we are breathing that. And I tell you I see  
13 these sites on a regular basis, nothing has changed. Nobody cares. And I'll tell you one of the big  
14 developers, the big name here, Del Webb, you know, Anthem 5,000 acres (inaudible). I went out there one  
15 day and the dust storm on their site was so bad I could not see on their property I was driving on.

16  
17 Vice Chairman Coyner asked have you contacted Clark County Air Department? That's an issue for them,  
18 not for us. But that would be your first line of questioning would go to Clark County.

19  
20 Mr. Mahal stated well I still think you have some State oversight on regulations.

21  
22 Vice Chairman Coyner stated well we have some, but you know local control is what the people are about  
23 and you certainly have the ability to do that.

24  
25 Mr. Mahal asked well does that mean since the Governor allowed that to come down to here, you know  
26 longer have any responsibility? Is that what that means?

27  
28 Vice Chairman Coyner stated you know I'm not going to debate you on that point, but there is certain duties  
29 that are rendered to Clark County in the air quality field and you'll be hearing an update on that at 11:30 if  
30 you stay around.

31  
32 Mr. Mahal asked okay, but does the State have oversight? Is the State concerned about the health of the  
33 people in the entire State for whatever reason? Is it?

34  
35 Vice Chairman Coyner stated well I'm not going to debate you on that point.

36  
37 Commissioner Johnson stated this body has oversight of the Clark County program.

38  
39 Mr. Mahal stated yes, I understand that.

40  
41 Commissioner Johnson stated they operate it, but we can evaluate the program.

42  
43 Mr. Mahal stated right and that's what I'm asking here. This program has totally failed. I've driven by every  
44 place I go because of my background. I pay attention to these construction sites here. I will tell you in a year  
45 and a half I have found one site that had no (inaudible).

46  
47 Vice Chairman Coyner asked how many times have you called the Clark County Air Quality people?

48  
49 Mr. Mahal answered I've been working on this problem with these people for 17 years.

50  
51 Vice Chairman Coyner asked how many times have you called them?

52  
53 Mr. Mahal answered more times than I can remember. On one . . .

1 Vice Chairman Coyner asked how many times have you appeared at their meetings?  
2  
3 Mr. Mahal answered sir on one project I called them at least 10 different times on the specifics. They never  
4 did one thing.  
5  
6 Vice Chairman Coyner asked do you have some written record, some letters that you could show?  
7 Something to introduce that way?  
8  
9 Mr. Mahal answered well they probably keep records of the (inaudible). Anyway, I'll swear on a stack of  
10 Bibles if you'd like Mr. Chairman.  
11  
12 Vice Chairman Coyner stated I'd like you to turn to addressing the issues in the petition that we have before  
13 us.  
14  
15 Mr. Mahal stated I had a couple of other things here I was concerned about. Is there anything in here that  
16 calls for auditing some of these programs? You know from the State level to the various communities  
17 around the State to see how they're doing? If they're doing what they're supposed to be doing?  
18  
19 Vice Chairman Coyner asked in this particular regulation?  
20  
21 Mr. Mahal answered yes.  
22  
23 Vice Chairman Coyner stated I can ask the staff if you'd like me to.  
24  
25 Mr. Mahal stated well it seems if there is I would like to know what we need to do to file an official concern  
26 to the State to do an audit program down here on Clark County and we would like to not only audit what the  
27 air quality situation is, we would like to have an audit of the monitoring stations. We'd like to have an audit  
28 of how they operate their monitoring stations. It's interesting when the highest winds come, generally the  
29 monitoring stations are down for maintenance. When we had a big hit here what six months ago? And of  
30 course we used to be able to get all of this on a 24 hour basis on their service. And after this became public,  
31 they shut it down. I guess I'm asking that you do an audit of the whole operation and we'll bring plenty of  
32 testimony if you're willing to do that.  
33  
34 Vice Chairman Coyner stated and we have done that in the past. We have dealt with Clark County's air  
35 quality procedures and their program and we've had extensive testimony on that. We revisit it on a regular  
36 basis. But right now I'd like to deal with this particular petition and not an overall examination of the Clark  
37 County Air Program.  
38  
39 Mr. Mahal stated well that's why I asked whether this was appropriate or I should come back later on and  
40 cover these issues. But I'm asking is there anything in this that has to do with auditing these programs  
41 throughout the State and enforcement? And if not, when can we have it done please? I'm going to leave you  
42 these so you can keep it in the mind's eye on what's really happening. You being in the construction  
43 business, you'd be interested to see that (inaudible). Thank you very much.  
44  
45 Vice Chairman Coyner called for questions from the Commission.  
46  
47 Commissioner Ricci stated Mr. Mahal you indicated that 93 pass and 7 percent fail. Are you saying that's  
48 too high of a pass rate? Or too high of a failure rate?  
49  
50 Mr. Mahal stated no, I'm saying I don't see the problem when 93 percent pass. I mean we like to talk about  
51 the failures you see? I'm on the other side and when 93 percent pass I'm going to say, "I wish some of the  
52 kids in Clark County School District would get grades like that." Any other questions? Thank you sir.

1 Vice Chairman Coyner stated I'll ask the question of staff, is there anything with regards to auditing the  
2 Clark County air program that would pertain to this petition?

3  
4 Ms. Cripps stated the answer to that question is no not in this petition.  
5

6 Vice Chairman Coyner called for further public comment. There was none. He called for questions from the  
7 Commission.  
8

9 Commissioner Johnson stated I have a question and it has to do with the issuance of general permits. I don't  
10 recall that we actually talked about that issue, and more particular my concern is a Class I permit and then the  
11 reference that I find here is for a Class II, but a person may challenge the provisions of a Class II general  
12 permit only at the time the general permit is issued after that point on a specific project there is no  
13 opportunity to petition. We offered earlier that there were appeal processes, but if the general permit is  
14 prepared for a Class or group of industries, then there's no right of appeal on a specific application? That's  
15 how I read the language.  
16

17 Mr. Elges explained fundamentally I don't agree with your reading and let me see if I can again kind of  
18 uncouple I think what's going on at least as far as this petition concerned. The references that I think you're  
19 looking at have to do with the reorganization that I discussed earlier and the existing regulations that deal  
20 with the requirements for general permits to contain language that say that the conditions of the general  
21 permit can only be challenged, I'm paraphrasing, can only be challenged at the time that the permit is issued  
22 or during that period of time when it's open for public comment, I believe is how the regulation is structured.  
23 I don't believe it prohibits any appeal rights or any subsequent actions on the conditions or aspects of the  
24 permit after that point. I believe if you're referring to the same section that I think you are, that it's . . .  
25

26 Commissioner Johnson stated what I'm going to cite the page number is page 17 and it's section 13,  
27 subsection 5 and this is for a Class II permit and my real concern is with Class I permits. But if, I don't find  
28 problem with your interpretation, but I would like the record to reflect that at least in my reading and I  
29 suspect that LCB took this language and interpreted that, when there's a general permit issued, you have the  
30 right of appeal, but when a particular applicant comes in for his permit, there is not right of appeal and that's  
31 my interpretation of what the language says. And if you'd like to put it into record that that is incorrect and  
32 that indeed there is opportunity I would be happy to hear that.  
33

34 Mr. Elges asked could you tell me again which section you're looking at?  
35

36 Commissioner Johnson stated page 17, section 13, subsection 5. "A person may challenge the provisions of  
37 a Class II general permit only at the time the Class II general permit is issued." I'm interpreting that as the  
38 issuance of the broad general permit, not the issuance of a particular permit of an applicant to operate.  
39

40 Mr. Elges stated I'm sorry Commissioner Johnson. I don't have the same thing that you're looking at.  
41

42 Commissioner Johnson stated it's "The director may issue a Class II general permit covering numerous  
43 similar stationary sources." Section 13.  
44

45 Mr. Elges stated okay, I've got you. "A person may challenge the provisions of a Class II general permit  
46 only at the time the Class II general permit is issued." I see and your concern is that . . .  
47

48 Commissioner Johnson stated that am I right in the process that there would be a general permit, a broad-  
49 base permit covering dry cleaners, although they are a Class I, okay and then when that general permit is  
50 issued I can come in and say, "The provisions of that general permit are not adequate to protect the public's  
51 health." And if we go on I can appeal this. But six months from now when Deluxe Dry Cleaner comes in  
52 and asks for a permit under the general permit, and I find that they are inadequate and I decide as an

1 individual outside of this process, that their application is for whatever reason inadequate, what's my  
2 recourse?

3  
4 Mr. Elges stated I understand. I'm not sure I have a great answer as to how all this ties together. I can tell  
5 you how it has been implemented. Essentially the way this works is the terms or the conditions of the permit  
6 as they are set and as the permit goes to public notice, again keeping in mind that these permits are set for  
7 five years, we're saying that public comment period is the time to bring forth any comments on the  
8 provisions of the general permit that's being proposed. After that point in time, once it's issued, those terms  
9 are not challengeable from the applicant's perspective. What I mean by that is if somebody is issued a  
10 general permit, the permit holder cannot come back after that permit has been issued to them and challenge  
11 the conditions that are set. I think that's different than if a third party is interested in challenging whether the  
12 conditions were set appropriately to begin with. I don't believe there's any roadblock if you will or any  
13 regulations that prohibit somebody from bringing that information forward and saying, "I believe the permit  
14 or the conditions contained therein were inappropriately established." I think they're two separate issues.  
15

16 Commissioner Johnson stated my concern is in relation to the particular application of Deluxe Dry Cleaner's  
17 application under the general permit, not with the original determination of the general permit. It seems that  
18 you're saying that whatever your interpretation of the application process, the applicant doesn't have the  
19 ability to go back against the general permit. But what about a third party? I don't see a provision in here  
20 that addresses that.  
21

22 Mr. Elges stated I'm not sure that there is anything in the NAC that does, but I do think there is statute that  
23 certainly provides for that path. I might be wrong too, and there may be something in the NAC that  
24 addresses that. I'm not thinking there is anything off the top of my head. But again I guess I'd never looked  
25 at this from the perspective of there being any kind of provisions that prohibit someone from coming forth  
26 and saying, "Look I've got a problem with these particular regulations or the conditions of this permit as they  
27 were set forth." If they were done inappropriately I would think that those would be certainly valid,  
28 appealable issues.  
29

30 Commissioner Johnson stated I understand. I'm not saying that you or the Division or the director are going  
31 to interpret this in ways that would be detrimental. But, again, there's an issue of 10 years from now and  
32 what authority we're giving here and not to say that you're going to take a Class I and have a general permit  
33 that would entail major one of these 30 type industries, but I don't see anything in the language that prohibits  
34 that.  
35

36 Mr. Elges stated I agree. I don't think there is anything in the regulations that prohibits us from establishing  
37 a general permit for a number of facilities.  
38

39 Commissioner Johnson stated Mining and Collin and Trent I don't know I just don't see, don't anticipate that  
40 you would be doing that, but I don't see anything granting you the authority or the director the authority to  
41 do that.  
42

43 Mr. Elges stated Commissioner Johnson the other thing I can share with you is when we put our Title V  
44 program together this was a topic of great discussion because I think your concerns were voiced by many  
45 other folks at that time. Again, I'm kind of going back into the earlier '90's. What I think Nevada had some  
46 concerns about whether we wanted to or had the option, quite frankly, to adopt this as part of our Title V  
47 program for our Class I permits. My recollection was that it was not an option. It was a requirement to get  
48 full Part 70 or Title V approval that we incorporate language that provided for general permits under the  
49 Class I provisions. That being said, I understand your concerns about how those general permits may or may  
50 not be utilized in the process. I do think there is opportunity to use those permits for certain categories,  
51 several of which I think we're looking at seeing in this proposed package today, primarily under the MACT  
52 provisions. As far as specific language that establishes frame works for when they should or should not be  
53 used, again I don't believe that that's there.

1 Commissioner Johnson stated well, let me clarify my concern. I'm willing to grant the authority on the  
2 general permit even for a Class I. I don't think that that would be abused. I think there are recourses there.  
3 I'm really concerned about this language that prohibits what I interpret the response of the public after a  
4 general permit has been issued. I think politically we could even under adverse administration, not under the  
5 happy one that we have now, address the issue of issuing a general permit generally. But I'm always an  
6 advocate of the public's right, one to know, and secondly to ultimately appeal or comment and I see some  
7 interference in this language.  
8

9 Allen Biaggi introduced himself as administrator of the Division of Environmental Protection. He stated  
10 Commissioner Johnson to paraphrase your comment, you're questioning whether or not it's appealable for  
11 that individual facility to apply for and receive the general permit and to tack itself onto it. I think you're  
12 point is a good one. I think that there's also statutory language in the air pollution requirements and  
13 elsewhere within water pollution control and hazardous waste management that would suggest that any  
14 decision of the Division is appealable to this body. I would suggest that you pass the version as it is today.  
15 We will do some research into that with regard to the potential conflict in the statutory and regulatory  
16 language and bring that back to you next meeting.  
17

18 Commissioner Reavis stated as I remember this thing, if the director issues the opportunity for a permittee to  
19 be included under the general permit that action whether he says yes or no does not provide an administrative  
20 or legal opportunity for review of the general permit . . .  
21

22 Mr. Biaggi stated that's correct.  
23

24 Commissioner Reavis stated not of that specific action. That specific action is appealable. All that says is  
25 that if you get into this mess, the general permit still remains intact.  
26

27 Mr. Biaggi stated that's what I think the intent of the language is.  
28

29 Commissioner Reavis stated that's what it says really, if you read the paragraph.  
30

31 Mr. Biaggi stated and again I think that there are other statutory provisions that indicate any decision of the  
32 agency is appealable to this body.  
33

34 Commissioner Johnson stated I would be comfortable with that information being in the record.  
35

36 **Vice Chairman Coyner called for further discussion from the Commission. He called for a motion**  
37 **that would encompass the language of the petition as well as the two specific changes, the one on page**  
38 **68 and the change on page 5 and the substitution of Exhibit 9 in lieu of the language that's in the**  
39 **petition.**  
40

41 **Commissioner Johnson motioned for adoption of Petition 20002-09 with the amendments that were**  
42 **provided by Mr. Elges as enunciated by the Chairman.**  
43

44 **Commissioner Crawford seconded the motion.**  
45

46 **The motion carried unanimously.**  
47

48 Vice Chairman Coyner moved to **Agenda Item V. Regulatory Petitions, Petition 2003-01.**  
49

50 (Petition 2003-01 is proposed temporary amendments to the Environmental Commission's Rules of Practice;  
51 NAC 445B.875 to 445B.899. The new amendments include: provisions allowing consolidation of two or  
52 more appeal that are substantially similar, the submittal of pleading and briefs, acknowledgement of service,  
53 stipulation to written testimony, due process and criteria for interveners to intervene in contested hearings,

1 rights of parties of record, conduct of parties at Commission hearings, an expanded definition and due  
2 process for subpoenas, and limitations on ex parte communications. Amendments are proposed to NAC  
3 445B.892 by requiring parties requesting subpoenas to be responsible for preparing and effectuating service  
4 and NAC 445B.895 to limit the time and scope of examination of witnesses.)  
5

6 David Cowperthwaite introduced himself as the executive secretary to the Nevada Environmental  
7 Commission. He stated before you today is temporary Petition No. 2003-01. This is a temporary regulation  
8 that modifies the Rules of Practice of the Environmental Commission. At the last meeting on September  
9 11th we had a workshop to review the proposed language. We had some modifications that came forth from  
10 that and they are inclusive within this petition. This petition is required by NRS 233B.050 to be updated and  
11 it is designed to update the Rules of Practice of the Environmental Commission. These Rules of Practice are  
12 the guidance mechanisms and due process mechanisms to ensure that the appeal process and general hearing  
13 process is conducted in an orderly fashion. This temporary petition presents new amendments and revisions  
14 to the existing Rules of Practice. It is an outgrowth of experience of appeal hearings which pointed to the  
15 need for better tools to manage the appeal process. The provisions also affect general hearings of the  
16 Commission. The hearing chairman under these provisions here is given greater latitude and discretion in  
17 invoking due process to be able to manage hearings.  
18

19 I would like to go through each section and summarize the function of each section. I'm going to begin at  
20 Section No. 2. Section No. 2 is a consolidation of similar appeals and related due process issues in a hearing.  
21 Due process where it deals with due process for pleadings including verifications, certificates of service and  
22 correction of the pleadings.  
23

24 Section 3 on page 1 deals with pre-hearing and post hearing briefs that can be ordered by the Commission  
25 and a requirement for certificate of service.  
26

27 Section 4 on page 1, in this particular section notices, findings, opinions and orders are to be served by  
28 certified mail and they are to be served upon all parties of records to the proceedings.  
29

30 Section 5 on page 2 provides that witnesses and testimony can be submitted in writing prior to a hearing  
31 including due process to call for written testimony and a validation of the written testimony. In this  
32 particular section, written testimony is to be treated as an exhibit.  
33

34 Section 6 on page 2 provides a due process for the ability of the Commission to be able to stipulate to facts.  
35 It provides for limited binding to facts in the stipulation in the Commission in this particular item is  
36 exempted from the stipulations.  
37

38 Section 7 on page 2 provides a method in due process for parties to intervene at appeals. This is a major  
39 issue. It provides for timelines to initiate the pre-process for intervening into appeals. It provides for all  
40 parties to be served when a party wants to intervene into an appeal and provides the criteria in the petition  
41 when parties ask to intervene.  
42

43 Section 8 on page 3 provides the basic rights to all parties at an appeal.  
44

45 Section 9 on page 3 provides for ethical and courteous conduct of a person at a hearing. It provides the  
46 Commission a method to ensure order at a hearing, including the exclusion of a petitioner, their attorney, the  
47 exclusion of witnesses and it provides a provision on limitation on taking of testimony and evidence.  
48

49 Section 10 on page 2 clarifies due process in ordering of subpoenas, establishes a chain-of-command for  
50 issuance of subpoenas. It provides a due process to either accept or squash a subpoena that has been  
51 requested and it also provides the deposition of witnesses shall be done in a manner prescribed by law for  
52 civil actions. It provides a clearer framework for the attorneys to be able to guide that process.  
53

1 Section 11 on page 4 declares that ex parte conversations are not to occur and provides a due process to  
2 provide for disciplinary actions on transgressions to this particular provision. This was an item that came up  
3 in the workshop and has been incorporated. Provisions 2 through 11 were constructed using existing  
4 language and then retrofitting it to meet the needs of the Commission.  
5

6 Section 12 is an amendment to NAC 445B.892 and it deals with subpoenas. It makes it consistent with  
7 Section 10 on time requirements and also makes a party wanting the subpoena have to prepare and serve it.  
8 The Commission is the one who issues it, but those parties have to prepare their subpoena and they have got  
9 to be able to serve it. So that onus does not fall upon the Commission unless it's the Commission doing the  
10 subpoenas themselves.  
11

12 Section 13 is an amendment to NAC 445B.895 regarding testimony. It deletes redundant and unnecessary  
13 requirements and testimony and it allows the chairman to control repetitive testimony.  
14

15 Section 14 on page 5 is an amendment to NAC 445B.897 regarding transcripts. It requires hearings to be  
16 electronically recorded. It provides for a method for transcribing to be done and in this method the party  
17 requesting the transcribing has to pay the cost, provides that the tapes shall be provided to any requesting  
18 party. It also deals with the issue of license and the function of a certified recorder in preparing of that  
19 transcript.  
20

21 Vice Chairman Coyner called for questions.  
22

23 Commissioner Ricci asked the part on section 8 where it says that each party is entitled to enter an  
24 appearance and all of that, and then if you look at section 13 where the Chairman may limit the scope of the  
25 examination of witnesses, if there's more than one party appealing the same action or whatever, can the  
26 Chairman then make it so that only one party speaks for all of them? Is that a discretion of the Chairman?  
27

28 Mr. Cowperthwaite answered Section 2 was primarily focused upon consolidating hearings. If somebody is  
29 filing an appeal against a permit and their appeal makes it total five in all and they are dealing with the very  
30 same thing, they can be integrated together. In the past we've had situations where the Chairman has tried to  
31 be able to grapple with repetitive testimony. This would provide a stronger tool. If the parties get up there  
32 and start being repetitive, it will be handled on a case-by-case basis. It's very difficult to create language that  
33 is iron-clad. This only provides guidance in the hearing process and authorizes the Chairman of that  
34 particular hearing to be able to try to channel the discussions and focus it to make sure that the same ground  
35 is not constantly being re-canvassed.  
36

37 Vice Chairman Coyner stated the public comment period of the appeal hearing provides that any person  
38 wanting to give testimony can. So I don't think anything in here requires essentially multiple viewpoints to  
39 be funneled in to one spokesperson.  
40

41 Commissioner Ricci stated my question was more directed to somebody who brings the action itself not  
42 necessarily somebody just with a general comment from the public. I assume there's an appeal procedure.  
43 It's one of those people who have appealed that within the guidelines of the regulations. That's who I'm  
44 speaking about Mr. Chairman.  
45

46 DAG Gray explained if it's a party they would have the opportunity to present whatever evidence. It's only  
47 when that evidence becomes repetitive that then the Chairperson of the panel can start to limit it and say, "Ok  
48 we've already heard this from the other party. Do you have something new to add?" But we couldn't  
49 preclude them completely from putting any evidence in.  
50

51 Commissioner Doppe stated there are two parts to this problem: the first part is the parties themselves and  
52 then the second part as I recall when you get up to the procedure there's opportunity for public comment or  
53 participation. Am I correct?

1 Mr. Cowperthwaite answered within the construction of the agenda there is the business at hand of dealing  
2 with the contested case and then at the bottom of the agenda, all agendas provided by the Attorney General  
3 has always made that very clear is that there is to be a public comment portion which if there's other things  
4 that need to be brought to that panel that they can, but it's outside the decisional process that is occurring  
5 with the contested case.

6  
7 Commissioner Doppe stated I can recall an instance where there was a large number of people in the  
8 audience and then when we got to that particular item, they all stood up as if to get in line to basically  
9 provide character witness on an issue that was generally related, but they're really not the core of the matter.  
10 The tools to have limited that would have been greatly appreciated because it really didn't add anything to  
11 the decision process. Also, does the petition apply towards witnesses called by the parties? Or is there a  
12 method to somehow eliminate or reduce redundant testimony in the public process? Because what I've seen  
13 is the one becomes the other you know, I mean these are uncalled witnesses that all stand up and start to  
14 speak on behalf of one or other of the parties.

15  
16 DAG Gray explained this Commission holds different types of hearings and these procedures are set out for  
17 your contested case hearings, which is where you have two parties or possibly three or four parties depending  
18 on who has intervened. In that case, the public comment comes at the end of the hearing after a decision has  
19 been made as opposed to where you have a public hearing say for a variance request. In that case you have  
20 the party, which is the person asking for the variance and then the statute allows for the public to make  
21 comment prior to the variance being issued. So these procedures wouldn't apply to that case. It would only  
22 apply to the case where you have a permit revocation or something along those lines.

23  
24 Mr. Cowperthwaite stated to answer your question and to continue on the issues at hand, in terms of this  
25 petition, were comprehensive in nature. So what we did is we tried to pick and choose the high points, the  
26 issue of the interveners, the issue of being able to put together multiple appeals, those type of things. If you  
27 want me to draft further language that deals with that aspect, I guess we could look around for it. When I  
28 went through and looked at the administrative codes my recollection is I didn't run across a whole lot of  
29 those things that dealt with how to be able to better manage public comment during the hearing process.

30  
31 Commissioner Doppe stated and it's not my intention to cut it short, it was after the decision was made. I  
32 stand corrected if my procedure recollection is incorrect. That particular case was a nightmare and it ran on  
33 what seemed to be forever. I guess I just lost the fact that that was already after we made our decision so,  
34 that's fine.

35  
36 Commissioner Johnson stated I think there's a distinction between the intervener in a contested case than the  
37 commenters and unsolicited either expert witnesses or people with general comments. For instance the  
38 Public Utility Commission has a provision that is very formal and I'm not suggesting that we even consider  
39 their process, but the issue of commenters versus interveners is probably one that I think is recognized in  
40 documents.

41  
42 Mr. Cowperthwaite stated that is true. The issue of interveners is going to be a repeating issue and the focus  
43 of this regulation is to provide a very clear due process of how they're able to enter into the fray in terms of a  
44 contested case and try to make it so it is consistently applied. Our problem in the past is try to be able to  
45 wing it as we go along and this addresses the issues of how not to get shot down when you're winging it. I  
46 also want to be able to say that I have not received any testimony either written or oral regarding these Rules  
47 of Practice subsequent to the public workshops.

48  
49 Vice Chairman Coyner called for further questions from the Commission. There were none. He called upon  
50 Tom Myers.

51  
52 Tom Myers introduced himself as Executive Director of Great Basin Mine Watch, an organization that has  
53 brought several appeals to the Commission and have experience with the Rules of Practice. We particularly

1 support Section 3. We've been frustrated in the past of not having a procedure for providing briefs and we're  
2 happy to see that will be added. Section 5 about having written testimony for long technical issues, I think  
3 that is good. I do see one potential issue here and that is that there's nothing that lessens the 20 day period  
4 for scheduling a hearing and with briefs and things like that coming up I mean if clearly the parties can agree  
5 to a continuance then maybe that needs to be required if they're going to file a brief. But if you've filed a  
6 brief and you push the 20 days I'm not sure you can get it scheduled in 20 days. So maybe Mr.  
7 Cowperthwaite wants to respond to that because I don't think it's in here.

8  
9 One way of dealing with the question that Commissioner Ricci raised a second ago about having two or more  
10 groups being represented by one, to my understanding, it's not possible for two groups to bring an appeal  
11 jointly and thus you end up with two or more groups of people or individuals coming in and they may be  
12 consolidated, but they're all there representing themselves. Thus if it were possible for two or more  
13 individuals or groups to be on the same appeal, and maybe I'm just mistaken in practice, but I don't think  
14 that is possible at this time. That might allow one group to actually do the representing and that would help  
15 to avoid repetitive stuff.

16  
17 The last thing, it's probably not covered in here, but I just thought I'd bring it up, I mean at the moment we  
18 have 10 days to file an appeal of the decision. I know it's not being considered here, I think that at some  
19 point in the future you'll want to consider making that 20 days. The federal government allows 30 days. I  
20 can think of at least two appeals that have been filed that would not have been had there been more than 10  
21 days, so it actually increases the workload for the Commission to have such a short time period. I mean the  
22 permits are in effect from the day they are signed, so giving a little longer for the potential appellant to  
23 actually think about it, is sort of what I'm suggesting. I know that's not a part of what's in this petition, but I  
24 think it ought to be thought about at a later date especially since these are temporary. They will be revisited  
25 and maybe it's something that could be revisited. Thank you for your time.

26  
27 Vice Chairman Coyner called for questions. There were none. He asked Mr. Cowperthwaite if he had a  
28 response.

29  
30  
31 Mr. Cowperthwaite stated I will pick and choose on it. Some of these issues are embedded by statute. The  
32 issues that have been raised by Tom are also embedded by statute. The Commission's leeway in dealing  
33 with those things is very, very limited. I could certainly go back and research the foundation for the appeal  
34 periods and determine them based upon whether there is a statutory foundation that drives it or if it was a  
35 desire to establish this within the context of the Administrative Code. All of the appeal periods are defined  
36 within the Administrative Code. There is a citation that essentially sits at the end of every chapter that lays  
37 out the appeal period and the window of opportunity to be able to file an appeal.

38  
39 Commissioner Crawford asked is the requirement on a contested case hearing for a public comment period  
40 embedded in statute?

41  
42 DAG Gray asked are you talking about a public comment when we have a hearing?

43  
44 Commissioner Crawford asked on a contested case?

45  
46 DAG Gray stated that goes under the Open Meeting Law. Even though we're dealing with a couple of  
47 different chapters here. We're dealing with the APA 233B, which sets out your due process rights for the  
48 parties, but because this is a public body, even when it just sits as a panel, we still have to comply with the  
49 Open Meeting Law and that's where you get the public comment requirement.

50  
51 **Vice Chairman Coyner called for further questions from the Commission. There were none. He called**  
52 **for further public comment. There was none. He declared the public comment period closed and called**  
53 **for a motion.**

1  
2 **Commissioner Ricci motioned for approval.**

3  
4 **Commissioner Johnson seconded the motion.**

5  
6 **Vice Chairman Coyner called for discussion on the motion.**

7  
8 **Commissioner Johnson stated I'd just like to commend David in preparing this document. It's a fairly**  
9 **complex issue and I think he's done a very good job.**

10  
11 **Commissioner Ricci stated if my experience from my agency is anything to deal with, just by the fact that**  
12 **you have an appeal period set out by statute doesn't mean anything. We have an appeal from 1999 on a**  
13 **decision that was made then, so, that's three years ago. And by statute it is 30 days.**

14  
15 **Vice Chairman Coyner called for a vote on the motion.**

16  
17 **The motion carried unanimously.**

18  
19 Mr. Cowperthwaite stated this regulation will return to you probably in September 2003. It expires by  
20 limitation on November 1, 2003. It will be drafted as a permanent regulation. It will be a permanent  
21 regulation.

22  
23 Vice Chairman Coyner moved to **Agenda Item IV. Presentation on the Status of the Air Quality**  
24 **Programs in Clark County.**

25  
26 Chris Robinson introduced herself as the director of the Clark County Department of Air Quality  
27 Management. She stated I've been asked today to give you a status report on how we're doing in Clark  
28 County with respect to our air quality programs.

29  
30 What I thought I'd talk about briefly first is that as many of you may know historically air quality programs  
31 were governed by both the Clark County Health District and the Clark County Board of Commissioners.  
32 The regulatory and enforcement component being under the Clark County Board of Health and the planning  
33 component being under the Clark County Board of Commission. At the 2001 State legislature there were a  
34 number of bills proposed with some discussion about air quality management and funding. The two that  
35 stood out the most were the bill to create a single unified agency and the accompanying funding package that  
36 would have increased the smog check fee to fund the new agency. As you also may know that the funding  
37 bill did not make it out of the Assembly. It did come out of the Senate and the agency bill came out of both  
38 houses successfully and went to the Governor's desk for signature. The Governor vetoed that bill to create a  
39 new air quality agency because he didn't think it was appropriate to do so without accompanying funding.  
40 So, in June of 2001 the Governor gave direction to the Clark County Board of Commissioners to take all of  
41 the air quality programs in Clark County and move them under Clark County management.

42  
43 Clark County assumed the responsibility for air quality programs in August of 2001 and moved to the Clark  
44 County Government Center in October of 2001. It merged two agencies together, as I talked about earlier,  
45 requiring a new bargaining agreement and anybody who has been through that process knows that it's  
46 extensive and complicated. It did work out and we created one bargaining agreement in January of this year.  
47 There was a lot of discussion about what entity was going to be responsible for air quality programs with a  
48 lot of discussion with the different municipalities. Ultimately, as I said, the county was given the  
49 responsibility by the Governor, but to ensure that there was community involvement the Board appointed  
50 two board-appointed committees: the Executive Advisory Committee, and the Technical Advisory  
51 Committee. The Executive Advisory Committee is the County Manager and all of the City Managers of the  
52 various municipalities in Clark County as well as Mr. Biaggi from NDEP and representatives of DMV and  
53 State Department of Agriculture as well. The mission is to provide input on policy issues to the Clark

1 County Air Quality Management Board and to myself to discuss and recommend solutions to conflicts,  
2 challenges, or policy issues relating to air quality programs in Clark County and to ensure that the respective  
3 governing bodies of the local governments and State agencies have an opportunity to provide input regarding  
4 issues of concern, challenges and how we're doing. That group meets quarterly and has done so since that  
5 group was established.

6  
7 The other committee is the Technical Advisory Committee, very similar in mission providing input on  
8 technical and policy issues to the Air Quality Management Board and then to the Executive Advisory  
9 Committee. That group is made up of a larger body of stakeholders including the same agencies that make  
10 up the Executive Advisory Committee, but it's much more extensive, including many private sector members  
11 and then continued on with the same mission to discuss and deal with air quality technical issues. And again  
12 to ensure that the participation of governing bodies and stakeholders.

13  
14 Governor's quarterly meeting – as all of these discussions were occurring at the last legislative session and as  
15 it came to (inaudible) and the Air Quality Management Board which is the Clark County Board of  
16 Commissioners they meet as a separate body, but different hats, same people, the Governor asked to be kept  
17 informed concerning air quality issues and the status of our programs here in Clark County. He has asked for  
18 quarterly meetings which we have conducted. The chair and the vice chair of the Air Quality Management  
19 Board and the mayors from each of the municipalities are invited to attend those meetings.

20  
21 I'm going to talk a little bit about budget and staffing which was as you may or may not know one of the  
22 issues that we had as the agencies were separated. Woefully understaffed and resourced would be an  
23 understatement, but I am proud to say that the Air Quality Management Board in FY 02 approved 14  
24 additional positions. Most of those are field staff for compliance purposes, some permitting staff, some  
25 administrative staff. And in FY 03 the Board approved an additional 11 positions same type of makeup.  
26 One of the things that we were lacking significantly in was what I always call those ancillary positions that  
27 make an organization run, information technology folks, and finance people. We have lots of those folks in  
28 place now. All of those positions are filled or in active recruitment. In addition to that, one of the reasons  
29 that Clark County was chosen to be responsible for these programs was their commitment that they made for  
30 both staff and fiscal resources. They've made commitments or contributed more than \$5 million additional  
31 to the Department of Air Quality Management during these two years and I should note that that's an  
32 additional \$5 million onto the general fund, not counting the revenue that we receive from our permitting  
33 fees and state and federal grants and that sort of thing and that total comes to about \$10 million this year.

34  
35 I want to talk a little bit about what we've been up to over the last 18 months or so. We were granted interim  
36 approval of our Title V program in July of 1995. Full approval of that program was granted to us and  
37 became effective in November of 2001. That was federally registered on December 5, 2001. And just to  
38 give you a picture there are 21 sources in Clark County that require Part 70 permits.

39  
40 We made a commitment to EPA when we received full approval of that program and of course you all  
41 understand what full approval of that program means. It means we deal with the program and not the EPA.  
42 We have five pending Title V source permits that we need to issue. We made a commitment to them that we  
43 would have all of our 21 permits issued by December 3, of 2003. We have five left. We've issued three this  
44 year. We have three currently in public notice and we very much expect to meet our commitment.

45  
46 Power plants – we have issued eight authority to construct permits for combined cycle power plants totaling  
47 about 5,400 megawatts. All are natural gas, no diesel fuel backup capability. Four projects have commenced  
48 construction, 840 megawatts we expect to be online this winter which are Mirant and Las Vegas Co-Gen.  
49 Seventeen hundred and seventy additional megawatts on line by summer of 2003, Duke and Reliant Big  
50 Horn and one application is currently being processed for approximately 500 megawatts.

51  
52 Let me talk a little bit about what's going on up in Apex. Our monitoring data showed us that we had four  
53 exceedences of the 24 hour PM 10 standard between 1998 and 2000. We did not measure any exceedences

1 in 2001, but what we did to deal with that is we began working with the EPA to create a Memorandum of  
2 Agreement that would say that we would take our existing dust regulations that were initiated in January of  
3 2001 in Clark County and extend them out into the Apex area. We would do that through a Memorandum of  
4 Agreement and not a SIP. It'll still go through the federal register process, but what that does is allow us to:  
5 (1) get our regulations implemented out there ASAP prior to preparation of a lengthy State implementation  
6 process. Our Air Quality Management Board adopted those regulations of what we call the Section 90 series  
7 for unpaved roads, parking lots and disturbed vacant land which are already existing in the valley in Clark  
8 County and extended it out to the Apex valley. That of course includes construction, but that was already  
9 included county-wide. And, again, that gives us local control of our solutions which we think works much  
10 more effectively.

11  
12 You've probably heard some about the local Emission Reduction Credit program or it's sometimes called the  
13 Road Paving program in Clark County. It served its purpose and it did get a lot of roads paved, but it's  
14 obsolete and it's, frankly, more trouble than it's worth. We asked the Board to adopt new regulations, which  
15 they did in December of 2001, which ended what was the most controversial component and that was the  
16 emission pollutant trading. Not to be confused with the Emission Reduction Credit program at the federal  
17 level which requires that new or modifying sources located in a non-attainment area offset emissions creating  
18 an overall net reduction in pollution. Our department is actively working with the EPA and the regulated  
19 community to develop such a program. One does not exist currently in Clark County. That's a big issue for  
20 us because any major source, again, seeking to locate there would really be unable to do so at this point  
21 without any federal offset banking program.

22  
23 We are hosting with AWMA on December 9th and 10th, you know we would love participation anybody  
24 who is interested and also that conference will be bringing folks in from all over the southwest and some  
25 from further than that to talk about their successes and failures with offsetting programs and to learn how we  
26 can make ours work here effectively.

27  
28 One of the things I talked early on about when I took this position was leveling the playing field for the  
29 regulated community. It became apparent to us that not all sources had the permits that they needed, some  
30 did, some didn't and we didn't think it was fair that some of the regulated community had to abide by the  
31 rules and frankly others didn't. So we set out on an un-permitted source course to go out and find them. We  
32 dedicated one full-time person to that, we certainly could use more, but it's what we had. We looked at 557  
33 companies to take a look at their permitted source status and issued corrective action orders to 79 of those  
34 companies that should have but did not have permits and we worked through them in getting that process  
35 taken care of. I should note that not all of those, in fact most were not big, large "we have our environmental  
36 person and they should know better" kinds of companies. It was in a much lower level than that and so it  
37 was good that we were able to spend time working with those folks to get them up to speed.

38  
39 Our dust permit program - 18 months ago that was a source of many complaints to our agency. It took any  
40 where from two weeks to two months to get a dust permit. That's not the case any more and if that is the  
41 case I want to hear about it. I don't think it is, but our current turnaround time is anywhere from two to five  
42 days. In 2001 a record year for construction activity permits, we issued 2,184 permits on 21,770 acres of  
43 land. It looks like, well we already have exceeded that. As of November 18th we've issued 2,200 almost  
44 2,300 permits on 28,500 acres of land.

45  
46 Just briefly, status of our State Implementation Plans - The Board of County Commissioners in August of  
47 2000, adopted the State Implementation Plan for carbon monoxide. We have been through all of the things  
48 that we always hope to get through when we talk about a SIP, demonstrating attainment, which we proposed  
49 we would demonstrate by the end of calendar year 2001. We have done that. Our mobile source budget was  
50 approved. The SIP itself was deemed complete by EPA. We're waiting for EPA final approval on I will say  
51 with some confidence that that should happen actually this week or next and actually that will be on both the  
52 PM 10 and carbon monoxide SIP a long awaited day for us in Clark County.

1 We have three years of what we call clean data or compliance with the National Ambient Air Quality  
2 Standards. Hopefully by the end of next month we'll have four. There are two required for reclassification  
3 and as soon as we get our SIP approved we'll be able to submit the maintenance plan that we've been  
4 working on that of course suggests how we're going to continue to stay in attainment.

5  
6 PM 10 – the plan was adopted by the Commission in June of 2001. It also is under EPA review, projects  
7 attainment of the annual standard by calendar year 2001. Again, we projected and met that date. It does  
8 request an extension of the attainment of the 24 hour standard until the end of 2006. The mobile source  
9 emission budget has been approved for the PM 10 SIP as well. The plan was deemed complete in January of  
10 this year stopping the sanctions clocks. And EPA needs to approve or disapprove the PM 20 SIP by January  
11 of 2003. Again, we are expecting approval of both CO and PM 10 before or just after Thanksgiving.

12  
13 We submitted our reasonable further progress report saying how we're doing on the implementation of the  
14 SIP itself which we've actively been implementing without approval. And we submitted that in June of  
15 2002.

16  
17 We implemented new, probably the most stringent, dust regulations in the country in January of '01. So far  
18 approximately 1/2 of the unpaved roads have been paved which is a commitment under the SIP and of course  
19 that's those that have 150 average daily trips or greater. Stabilizing of vacant land is a major component of  
20 our PM 10 SIP. To date in 2002 we've inspected about 2,400 vacant land parcels and issued about 885  
21 corrective action orders. I should note to this group as I always do or try to remember when I'm speaking in  
22 public my goal is not to collect penalties and not to issue notices of violation that's not what we're here for.  
23 That doesn't clean the air. However, we certainly do that when we need to do that. These particular, when I  
24 use that 885 number, corrective action orders do not come with penalties. They're simply statements that are  
25 given to the property owner that say, "We have these issues. We'd like to work with you to get your land  
26 stabilized." Not until a notice of violation is issued do penalties accompany that process.

27  
28 Construction activities – to date in 2002, about 3,600 almost 3,700 construction site inspections have been  
29 made and I should note that both our own inspectors that are out in the field every day and the regulated  
30 community thus far have communicated that they believe that the new dust regulations appear to be effective.

31  
32 I want to talk briefly about high wind events and I want to talk about it because it's the first time we've ever  
33 successfully been able to do this in Clark County. We have had seven exceedence days for the 24 hour PM  
34 10 standard in 2002. Four of those days came with extremely high wind days. As you probably know the  
35 EPA allows for what's called the flagging justification when extremely high winds accompany an  
36 exceedence although they don't do it easily and there are lots and lots of documentation and paperwork to  
37 submit to the EPA to justify on our side as there should be that it was in fact natural events that caused an  
38 exceedence. We have submitted our documentation for four of those seven days and EPA has given us  
39 concurrence thus far on two of those days. The other two, of course, are pending. Why is that significant?  
40 Because that leaves us with three days that would be counted against us. And as we look at the annual  
41 standard if all of the 24 hour averages that build on and creates an annual standard we want to make sure that  
42 we keep in compliance with the annual standard and this will certainly help us do that. And again I should  
43 note it's not a way to back out of our commitment to do what we need to do in any way. It's simply saying  
44 that when we've done everything that we can do and implemented everything that our State Implementation  
45 Plan tells us to do and we still have exceedences because the wind is 35, 40, 50 miles an hour there are  
46 allowances for that. Again, I focus on this because it's the first time in Clark County that we've actually  
47 been able to justifiably document that that's the case.

48  
49 Future challenges in Clark County – carbon monoxide budget. As you know all federally-funded and  
50 regionally significant transportation projects need to stay within the annual CO budget. Without additional  
51 capacity on our roadways the Las Vegas metro area will reach gridlock between 2010 and 2015 is the  
52 projection we get from our Regional Transportation Commission. With additional capacity and beyond that  
53 outlined in RTC's existing plan, and without additional control measures for carbon monoxide, our carbon

1 monoxide budget will be exceeded during the same period. You can see that's a dilemma for us. We're  
2 working closely with the RTC to evaluate different control measures to both allow road-rate growth and  
3 alleviate gridlock and at the same time meet our air quality standards. We certainly believe that both can be  
4 accomplished.

5  
6 Our challenges with PM 10 – certainly we have lots of them but probably our single biggest challenge is the  
7 stabilization of disturbed vacant land. It is bar-none the single largest source of fugitive dust in the valley. I  
8 make that note because I think a lot of folks think that it's construction sites and it may have been at one  
9 time. It is not anymore. And I'm not picking on the off-highway vehicle users here; however, we do need to  
10 work with that community to figure out a way to make it work for them and for us if we're going to reach our  
11 attainment deadline of 2006 that we've projected for the 24 hour standard.

12  
13 Ozone of course is always on our radar. Thus far our data shows that we are in attainment with the new  
14 promulgated 8 hour standard, but it's not by a lot and we will continue to implement the control measures  
15 that we already have in place for components making up ozone. The EPA is expected to ask for SIPs in  
16 2004. We don't, at this point, think that they will ask us for a SIP, but we are, like I said, continuing to  
17 implement the existing programs we have as well as gathering necessary data to continue to study and look at  
18 ozone and figure out how we can bring those levels down. We do have some pretty significant studies going  
19 on. We've got a county-wide off-road vehicle emission inventory, construction equipment, and diesel  
20 equipment. We expect that to give us a lot of information. We're looking forward to the date on that. We're  
21 also conducting a county-wide meteorological study to understand meteorological contributions to our ozone  
22 levels.

23  
24 Many of you have heard me say and I will say again, the haze in the Las Vegas valley I believe that if we  
25 could do something about the haze I'd probably never get another call about air quality again. People believe  
26 what they see. That's just a reality and we know that. The Desert Research Institute recently conducted a  
27 study of what causes haze in the Las Vegas valley and determined that 75 to 90 percent of most of the severe  
28 haze is generated locally. There are a lot of people who cringe when I say that for me that's a good thing  
29 because we can do something about it. The next bullet shows some of the elements of what DRI has  
30 determined makes up the haze. What we don't know is where what are the sources? I mean some of it's  
31 coming from dust, organic material, crustal material, elemental carbons, diesel, soot and we know that those  
32 are the kinds of things that dominate the haze. We don't know from what sources those things are being,  
33 what contributions are being made from what sources. That's a further study that DRI is doing for us. It's  
34 taking a little while because we want them to conduct that study through the winter time when we have our  
35 worst haze season. And then of course we'll evaluate potential measures for reduction of haze-forming  
36 substances once we have a better understanding of where it's coming from.

37  
38 Prevention of significant deterioration – this is an area where we in Clark County have spent a lot of our time  
39 over the last 12 months or so when we're looking at the development of the El Dorado Valley, the Apex  
40 Valley, the Ivanpah Valley with new airports and areas that are not in non-attainment but for which we, of  
41 course, have to do increment consumption analysis. That's an area we're spending a lot of time. What we're  
42 trying to do is work with our Planning Department to do some proactive planning in those areas so that we  
43 can, while continuing to meet the rules set forth, and there are many for us under the Clean Air Act. We  
44 want to work with planning to make sure that we outline carefully how we can get the best bang for the buck  
45 in any given valley in terms of both planning and land use and meeting our air quality standards.

46  
47 This is the last page I have. I wanted to comment specifically on some of the things we're doing with respect  
48 to public outreach which I have made a big priority of mine. The EPA conducted an audit of our monitoring  
49 program and network this past year. We are currently working to put together a corrective action plan.  
50 Much of that plan is complete; I'd say it's probably 95 percent complete. It will be submitted to the EPA  
51 probably at the end of this month, perhaps next month and it addresses all of the issues that they had. Some  
52 of those things included quality assurance, quality control concerns, public access to information, that's the  
53 reason I have that first bullet up there. We've worked extensively with UNLV and others to put together a

1 better more user-friendly, more telling, comparing apples to apples. We've had a lot of comments over the  
2 last several years about the way our Web page, from monitoring perspective, has been set up. We've made  
3 significant improvements to that Web page. It's not complete yet, but we will, it's probably 50 percent done,  
4 but you can see it. You can see all of the changes. We've done demonstrations at lots of public forums and  
5 have gotten some really good feedback. Anyway, just to follow up quickly on the audit, we will submit that  
6 corrective action plan and it will address all of EPA's concerns many, many of which have already been  
7 addressed but we'll document them formally in that plan.  
8

9 Public health advisories – we've started to work closely with the school district and news stations and others  
10 to do what we can in the way of forecasting, which of course is difficult. But if it looks like it's going to be a  
11 very high wind day we're trying to work with the school district and other at risk places, hospitals, elderly  
12 care facilities and make sure that we get the information to them as quickly as we can when there's  
13 something that's going to be problematic.  
14

15 Public announcements – citizen and regulated community workshops – we've really stepped that up over the  
16 last year. And vacant land compliance campaign, again I noted earlier that that was our single biggest source  
17 of fugitive dust. We're working hard to get the word out on stabilizing vacant land.  
18

19 Annual monitoring network meeting – we want to make sure that we are, and by that I mean with the  
20 regulated community, with EPA, with everybody who is involved with the public, involved in making sure  
21 that our monitoring network as we, by the way that was one of the things that was noted in the audit is to do a  
22 reevaluation of the monitoring network, which we are significantly, probably modifying that network. But  
23 we wanted to make sure that we're bringing everybody together annually to talk about how that program is  
24 going.  
25

26 And then the last thing we've done is starting to print significant documents in Spanish. That's it, I know it's  
27 kind of long-winded. Forgive me, I haven't seen this group before so I kind of start at the beginning. But  
28 with that I'd be happy to answer any questions.  
29

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

32 Commissioner Doppe asked did I see that slide correctly where you said we had to demonstrate a payment  
33 for CO by the end of 2001 and now they're deliberating at the end of 2002 whether or not to approve the  
34 plan?  
35

36 Ms. Robinson answered yes, you saw that correctly and yes, that's true. We are literally waiting to get the  
37 approval of that SIP so that we can submit the plan that says how we're going to stay in attainment.  
38

39 Commissioner Doppe asked stay in attainment?  
40

41 Ms. Robinson answered yes. And then subsequently ask for designation of attainment status for that  
42 particular pollutant. We can't do any of that until we have approval.  
43

44 Commissioner Johnson asked and the trend lines for the average annual 24 hour load can you speak to that in  
45 general? I know that's your basis of exceedence, right?  
46

47 Ms. Robinson asked you're talking annual, or 24 hour?  
48

49 Commissioner Johnson answered well the average annual load or exposure I guess would be the term. I  
50 think the average is 24 . . .  
51

52 Ms. Robinson stated I'm not going to be able to talk to numbers.  
53

1 Commissioner Johnson asked just general, are you holding steady, reducing or?  
2

3 Ms. Robinson answered clearly on the annual standard we've reduced over the year. As I said we had a  
4 three-year period with no exceedences of the annual standard. We said that we were going to demonstrate  
5 attainment by 2001 and we did.  
6

7 Commissioner Johnson stated not the violations. What I'm really talking about in the trend line is the  
8 average annual. I think the term is 24 hour average.  
9

10 Ms. Robinson asked do you mean concentration level?  
11

12 Commissioner Johnson answered yes.  
13

14 Ms. Robinson stated I'm sorry I'm just not going to be able to speak to those numbers. I have lots of graphs  
15 and charts that show where the exceedences are falling with respect to the standard itself. It sounds like  
16 that's what you're asking for? How far over the standard?  
17

18 Commissioner Johnson stated I'm really looking to see that the average exposure of your citizens is declining  
19 in total of the annual exposure of PM 10.  
20

21 Ms. Robinson stated I'll have to get back to you on that and I can and will. We have those numbers, I just  
22 don't know them off the top of my head. Clearly I would say that the, I'm stepping out on a limb here, but if  
23 we're starting not to have any exceedences that would suggest that the exposure is declining. But I will get  
24 you some numbers.  
25

26 Commissioner Johnson stated okay. Then secondly, and I have the request, two legislative proposals this  
27 time out of your agency and is this Commission, can we anticipate seeing some requests for regulatory  
28 changes?  
29

30 Ms. Robinson stated thank you. That's a great question. I left that out of my slide and not on purpose. We  
31 have one Bill Draft Request that we have submitted. Now I've seen some others come from different places  
32 and you know how vague they are at this point so I'm not sure what they're going to be. But the only one  
33 coming out of Clark County is it would be a sunsetted collection of fees on off-road diesel equipment. You  
34 may recall when we went through this process at the '01 session we talked a lot about in the discussions  
35 about increasing the smog check fee, which is not on the table now. Some of the members of various  
36 committees talked about what about the off-road equipment and at one point during that session we talked  
37 about a program for collecting fees on off-road equipment. Of course when the funding package went away,  
38 so did that. We're bringing that up again because what we'd like to do and the reason I say with a sunset is  
39 what we'd like to do is start to answer some of our own questions about good, costly and effective controlled  
40 measures for PM, both 10 and 2.5, on that kind of off-road equipment. It is my understanding that that's not  
41 something that's out there believe it or not. We don't have a lot of good control measures for that so it's  
42 really a matter of do we get out there in front of EPA and figure out what works best for us and have  
43 everybody follow us? Or do we wait until the EPA comes up with something and says, "Okay here is the  
44 standard and you have to do this." Obviously, that's a mixed bag. There are pros and cons to both. But,  
45 we've gotten some pretty clear direction both at the Governor's quarterly meeting as well as from our Board  
46 that we want you to get out there and find some control measures for that off-road equipment and the only  
47 way that we can do that is by collecting some source of revenue for that. So that's what's out their on our  
48 Bill Draft Requests. We are working extensively with the ABC, Associated Builders and Contractors, AGC  
49 and others and talking at every step of the way about what works and what doesn't and making sure that we  
50 get a package that works for both of us.  
51

52 Vice Chairman Coyner called for further questions. There were none.  
53

1 Ms. Robinson asked to make a quick comment. She stated we work very close with the State, Allen and  
2 Colleen and Jolaine and others and we want to continue that relationship and it's going very well.

3  
4 Vice Chairman Coyner called a lunch break. He reconvened the meeting and moved to **Agenda Item II.**  
5 **Regulatory Petitions, Petition 2002-10.**

6  
7 (Petition 2002-10 (LCB R099-02) is a permanent amendment to NAC 445A.119 to 445A.225 the water  
8 quality standards program. The amendment updates NAC 445A.119 to revise pH, chloride and nitrite  
9 criteria and for the inclusion of total ammonia and E. Coli bacteria. The amendment incorporates the E. Coli  
10 bacteria standard in the following rivers and creeks: Carson River, Walker River, Virgin River, Truckee  
11 River, Humboldt River, Colorado River, Muddy River, Snake River Basin, Chiatovich Creek, Indian Creek,  
12 Leidy Creek, Snake Creek, Beaver Dam Wash and the Meadow Valley Wash. The pH standard, and the  
13 new total ammonia standard that replaces the un-ionized ammonia standard is also selectively incorporated  
14 into the various water bodies listed above.)

15  
16 Randy Pahl introduced himself as the supervisor for the Standards Branch. He stated we have the unenviable  
17 task of revising our standards from time to time as you've seen what that can lead to in some instances. A  
18 big task for us is to periodically review the standards and update them as appropriate as new science comes  
19 up and that's really what we're doing today. We're statewide looking at ammonia, bacteria and the pH  
20 standards kind of throughout the whole regulation. So while the petition looks rather overwhelming, 215  
21 pages, it's really pretty streamlined when you break it down into just those three things we're working on.  
22 All of this is required by the Clean Water Act. I don't know if this has been touched on before, but we have  
23 to set water quality standards which includes beneficial uses. The two that we're really focusing on today are  
24 recreation, which is what the bacteria standard is for and then aquatic life which is related to the pH and the  
25 ammonia.

26  
27 From time to time EPA has been updating their recommended criteria for these three parameters and so we  
28 realize that a lot of these, the recommendations from EPA have been out for quite a while. In this petition,  
29 2002-10 we're making these updates and it's really part of our what we consider to be the triennial review  
30 where we go in and look at our standards throughout the whole State.

31  
32 Just to give you a little background, the pH, recommendations that we're incorporating have been out there  
33 since 1986. So some of our standards for pH have been outdated since then. E. Coli, some of the standards  
34 have been outdated since 1986. So another 12 years. The ammonia standards, they've been outdated since  
35 1992 and we'll be going into more detail on all of these.

36  
37 It's important to note that there are some water bodies where we're not changing the standards, Lake Tahoe  
38 is one of them. There's a lot going on in there right now with TMDL's and we're going to be working with  
39 California to work towards consistent water quality standards between the two states. Right now the  
40 standards are rather different in some areas. So that's not part of this action. Also, we're not changing Las  
41 Vegas Wash and Lake Mead standards. There are TMDL issues there that we have to work through in terms  
42 of if you change the ammonia standard you have to redo the TMDL. There's some criteria there already in  
43 place also and we see that the needs here need to be addressed in a more concentrated focus on the Wash and  
44 the bay since they have such unique needs. The class of waters, A, B, C, and D are also not in this action.  
45 We currently are reviewing those standards and hopefully next year we'll come forward with some  
46 recommendations there. Also, Tribal lands on which we have no authority. We're not proposing any  
47 changes on those reaches which are on Tribal lands. Actually in the future we're hoping to remove those  
48 from the regulations. There are a couple of stretches or so we need to work that out.

49  
50 We had a series of workshops (three of them) in Carson City, Elko, and Las Vegas around the end of August  
51 and early September. And really no comments. We happened to combine our standards changing workshop  
52 with our 303D list of impaired waters. We had these two combined workshops and all the comments we got,

1 a lot of them were really focused on the 303D list. We had some questions on the standards, but really it just  
2 seems to appear to be more of a non-issue for people the way that this petition is structured.  
3

4 So that's some basic background I wanted to give you. One of the first things that we wanted to do in this  
5 petition was to revise 445A.119. That's what some people refer to as a sideways table. I believe it's in  
6 Section 5 of the petition. We found through the process of doing our workshops that this table is very  
7 confusing to people and its application is confusing. The table is only informational; it is not regulatory. It  
8 says right up front that these criteria are to be used as guidelines in establishing water quality standards. It's  
9 a great comparison. You can look at TDS for instance and look at what the different criteria might be for the  
10 different beneficial uses. But, that in itself, these are not criteria that apply to any of the waters. And so  
11 what we found during the workshop was that with the confusions, you know even explaining it during the  
12 workshops that this was the case, we'd get subsequent calls and people were still thinking that we were  
13 changing the TDS standard for irrigation. Which we weren't, we were just putting in some numbers that are  
14 kind of general criteria that's out there by EPA.  
15

16 So with that in mind, in Exhibit 8, we would request that the Commission consider repealing this section of  
17 the regulations based upon our input that we received at the workshops and what we'd like to do is maintain  
18 that table just internally and keep it for information. I think it's good information, but it will be a lot easier  
19 for us to keep it current if it's outside the regulations and we don't have to go out to you folks and the public  
20 to update this. We can respond quickly to EPA changes and recommendations and then work through the  
21 proper channels to incorporate them into the regulations. I just want to emphasize, this table is not  
22 regulatory. It's purely informational and has caused more problems than it's worth. If the Commission is  
23 not comfortable doing that, I would request that Section 5 be withdrawn from this petition and that we'll  
24 pursue removal of that in a later petition. Are there any questions on that before I move on to pH?  
25

26 One of the things we mentioned was the pH. The pH is there for aquatic life, wildlife, and recreational uses.  
27 A lot of our standards change over time. EPA keeps coming out with new recommendations and over time  
28 we incorporate them. You end up getting a variety and inconsistency in the standards. So one of our things  
29 this year to incorporate the 1986 recommendations that came out of EPA and that's a pH range of 6.5 to 9.0.  
30 As the bottom bullet notes, a lot of these updates have already taken place in previous actions that have been  
31 taken.  
32

33 The particular water bodies that we are updating in this action are shown here. There's the Carson River,  
34 these three here are in Esmeralda County. The Beaver Dam Wash is also down in this part, I believe it flows  
35 into the Virgin River. The Snake Creek is kind of in the same area in the southeastern part of the State.  
36 (inaudible) Wash is down there also. So you can see we had quite a variety of 7.0 to 9.0 and 7.0 to 8.3 and  
37 we're getting them all consistent to 6.5 to 9.0. So it's really, it's quite a small percentage of, I'm not sure  
38 how many actual reaches we have in the regulations, maybe 60 or 70, so this is touching on a small  
39 percentage of those. And I just want to reiterate we're not doing anything with any of these the class waters  
40 do need some pH adjustments in those standards and we're not doing anything with Lake Tahoe tributaries  
41 and the Tribal lands. I guess one we don't have on here is no action on the Wash and Lake Mead. I believe  
42 those pH standards are already 6.5 to 9.0.  
43

44 Commissioner Crawford asked maybe I'm misunderstanding it, but you're not doing Tribal lands from  
45 Walker Lake to Weber Reservoir? That's on the Schurz . . .  
46

47 Mr. Pahl answered no we're not.  
48

49 Commissioner Crawford asked that's one that you're leaving out?  
50

51 Mr. Pahl answered yes.  
52

1 Commissioner Crawford asked then why some other streams, Esmeralda and not some of the other portions  
2 of the State?  
3  
4 Mr. Pahl answered because we do have authority over those.  
5  
6 Commissioner Crawford asked I know, but why did you pick those and not some of the ones in other parts  
7 of the State? Because they are the only ones that need updating?  
8  
9 Mr. Pahl answered yes. There are a lot of those, just like the Walker, we go in periodically and do these  
10 basin-wide reviews versus the statewide review we're doing now. And we've definitely kind of moved  
11 around the State. Some basins got updated and others didn't. So we kind of wanted to go ahead and do this  
12 blanket update.  
13  
14 Commissioner Crawford asked and the Snake Creek that you referred to is in which county?  
15  
16 Mr. Pahl answered I think it's Lincoln County. It's not up in the Snake Basin. It's down in the southeastern  
17 portion. It was actually one of the first water bodies in our regulations in 1967.  
18  
19 Commissioner Reavis asked are these pH values all consistent with the Gold book, or whatever the most  
20 current water quality book is?  
21  
22 Mr. Pahl answered yes.  
23  
24 Commissioner Doppe stated I understand that we're simply lining everything up to the federal standard, but  
25 if you back up for a second, generally speaking in terms of beneficial use, the recreational activities or  
26 drinking water I guess if you want to do the highest stuff. But if I'm looking at these things here on pH as a  
27 person who bought a body of whether it's 6.5 or 9.0 it really probably doesn't make too much difference.  
28 But in terms of the aquatic life in there there's a big difference between 6.5 and 9.0 to some species. Is that  
29 correct?  
30  
31 Mr. Pahl answered yes.  
32  
33 Commissioner Doppe stated and some of them may not do well at one end or the other of that spectrum.  
34  
35 Mr. Pahl stated well and also as you're going to hear a little bit later, the toxicity of ammonia changes the  
36 pH.  
37  
38 Commissioner Doppe stated exactly.  
39  
40 Mr. Pahl stated well I mean not only do you have pH concerns you've got . . .  
41  
42 Commissioner Doppe stated interrelated . . .  
43  
44 Mr. Paul stated (inaudible) effects and everything else.  
45  
46 Commissioner Doppe asked is it the right thing to do then to broaden the standard to where we were 7.0 to  
47 8.3 or whatever and now we've broadened it so much that we no longer are able, are we jeopardizing our  
48 ability to protect the aquatic life by opening the standard that wide, even though the EPA says to do it?  
49  
50 Mr. Pahl answered no, I don't believe so. We're tasked with updating our standards using the best science  
51 available. And this is the best science that's out there. We sure don't have the resources to come up with  
52 something else and this change has happened throughout the standards for a number of years. Ever since '86

1 we've been gradually updating the standards. Maybe some people will question the wisdom of that, but  
2 we're not alone, all the other states are doing it.  
3  
4 Commissioner Doppe stated so we're killing fish off uniformly.  
5  
6 Mr. Pahl stated I mean their research has shown it's not a problem.  
7  
8 Commissioner Doppe stated I don't know if within the State of Nevada if we know the different species of  
9 aquatic life whatever form they might take. How sensitive are they to basically taking a narrow range and  
10 say, "Well at 6.5 to 9.0, that's a very broad range"?

11  
12 Mr. Pahl answered we could even go in and come up with our own recommendations. In the Walker the pH  
13 level goes up to 9.7 and we set that based upon our historic data that we've been collecting off of the lake. It  
14 showed that even at 9.7 the fish are still surviving. I mean they've got other stresses on them in Walker Lake  
15 other than the pH.  
16

17 Commissioner Henderson asked what factors affect water pH and if you do have a water body that is not in  
18 compliance what management steps would be taken?  
19

20 Mr. Pahl explained there's acid mine drainage. I believe there's bacterial processes that go on in the water  
21 too that can affect pH. (inaudible) natural (inaudible) in your basic soils too that can affect it. The bottom  
22 line is with all these standards that we talked about most of these if they're a non-point source problem our  
23 approach is do a voluntary program to be in best management practices to try to address the problems. And  
24 it's a voluntary program. That's maybe a little different when it comes to dealing with a mining operation  
25 where they may have a discharge permit.  
26

27 Commissioner Henderson stated let me clarify my question if I may. The characteristics of pH in the water  
28 at least in my mind are mostly geologic in soil base, more natural based than a lot of man's activities. I'm  
29 sure there are instances where there are problems. But on a general statewide basis, most of the pH concerns  
30 relate to the actual potential of the water body I would think. Is that a correct statement? Or am I off-base  
31 on this?  
32

33 Mr. Pahl stated you know we just completed at length the list of impaired waters and I don't believe there's  
34 any pH water on the (inaudible) list. I mean there may be some subsequent tables where it identified  
35 potential problems, but for the list itself of impaired waters, we didn't have any. So, even with the existing  
36 standards, and I'm thinking the Humboldt specifically where we have 6.5 and 9.0 all over the state. What I  
37 show to be up there is just a small scattering of what we have and we're meeting 6.5 to 9.0 now.  
38

39 Commissioner Crawford stated you mentioned that you would rather not have the Section 5 list in there as  
40 regulation and, but as criteria. But the language that the water quality criteria or designated beneficial uses  
41 of various waters are in the following table and the criteria characteristics based on, it sounds pretty firm.  
42 Like it is the law of the land. Do you have proposed language that would amend that language to make it  
43 clearer that this is just a guideline?  
44

45 Mr. Pahl stated well maybe it appears to be a conflict between that first sentence and then the second  
46 sentence where it does say the water quality criteria uses are in the following table.  
47

48 Commissioner Crawford asked and are to be used as guidelines?  
49

50 Mr. Pahl explained we use them in guidelines that are setting the standards from 120 on. But they,  
51 themselves, we don't use. If you are somebody setting discharge permit limitations, they don't use these.  
52 They go to .120 and beyond to do those.

1 Commissioner Reavis stated technically as long as this is in here every time EPA issues a new criteria this is  
2 all going to change to reflect the new criteria.

3  
4 Mr. Pahl stated which you'd be doing monthly. It is unrealistic to try to keep this thing updated and less  
5 confusing to the regulated community.

6  
7 Vice Chairman Coyner stated well okay we've got pH . . .

8  
9 Mr. Pahl stated we've got a couple of others.

10  
11 Vice Chairman Coyner stated and you've got a couple of others we want to discuss; maybe we'll revisit that.

12  
13 Mr. Pahl introduced Paul Comba, Bureau of Water Quality Planning, Division of Environmental Protection.

14  
15 Paul Comba introduced himself. He stated I would like to provide a brief overview of the proposed changes  
16 that you have in front of you for the bacteria and ammonia water quality standards. What I'd like to talk  
17 about first is what we're proposing in our bacteria water quality standard changes. This is going to be a  
18 statewide water quality change. We have the fresh water quality criteria in our regulations right now for  
19 protection of human health. Water qualities can contain different concentrations of pathogens that can cause  
20 illnesses in human beings. We need to have some sort of a criteria on our books in order to protect the  
21 human health (inaudible) water recreational activities involving contact with the water. Often the direct  
22 measurement of these pathogens (inaudible) is not possible. So instead what is used is an indicator organism  
23 which more or less serves as a tracer and allows you to make a measurement of the water quality criteria and  
24 what's going to be the potential risk to human health. Historically the indicator organism which was  
25 (inaudible) or engaged in human health risks associated with water volumes has been (inaudible). That being  
26 recommended back in 1968 by the federal water pollution control administration.

27  
28 Nevada's water quality regulations (inaudible) fecal coliform criteria that are there is shown on this  
29 overhead. So those fecal coliform standards are being differentiated depending on whether the water body is  
30 designated for recreational activities involving contact with the water or recreational activities not involving  
31 contact with the water. Now in the first category, what that implies is that there be actual direct water  
32 contact with the water you have a potential for full body emersion and the likelihood that you could possibly  
33 ingest contaminated sources of water.

34  
35 The later category is more or less non-direct contact with the water and the particular activities associated  
36 with that would be say boating on water or fishing (inaudible) the top one is probably something more along  
37 the lines of like swimming, water skiing, anything where you would actually go under water and just  
38 (inaudible).

39  
40 The numerical levels that are being used are shown here. Most categories have a geometric mean as well as  
41 a single sample value for recreational activities involved with contact with the water, 200 and 400 and that  
42 particular designation applies to most of the major water bodies in Nevada those being the major river  
43 systems, the Carson, the Truckee, the Humboldt, Walker, up north the Jarbidge east and west fork of the  
44 Owahee (inaudible). That's out there (inaudible) be reaches of the Colorado River as far as our water quality  
45 regulations. Below (inaudible) and below the Hoover Dam.

46  
47 In the bottom designated use category the two water bodies currently in our regulations that they apply to are  
48 the Virgin and the (inaudible) River systems.

49  
50 Associated with these numerical values is also some additional language that EPA put out in fact when the  
51 fecal coliform standards were originally adopted and that additional language was that the geometric mean is  
52 to be calculated based on a minimum of five samples collected over a 30 day period and the single sample  
53 values were not to be exceeded more than 10 percent of the time based on the number of samples collected

1 over that 30 day period. Since the fecal coliform standards were developed EPA has been doing recent  
2 studies and indicator organisms and what they have found is that E. Coli (inaudible) is actually a better  
3 indicator organism for predicting the potential human health risks associated with (inaudible) which had  
4 direct contact with the water as well as non-direct contact with the water. Based on NDEP discussing which  
5 one to use it's the Nevada State Health Laboratory who is responsible for conducting most of the analysis on  
6 our water samples which are collected from our surface water monitoring network, we are proposing to use  
7 E. Coli as the new bacterial indicator for evaluating human health risks associated with recreational activities  
8 on the water.  
9

10 This particular petition doesn't involve the fecal coliform at this point. What we are proposing today is to  
11 include new E. Coli criteria in our water quality regulations. When each water body is individually  
12 (inaudible) in our triennial review cycles we wouldn't have anything to make an evaluation on whether we  
13 would remove the fecal coliform standards from the water quality regulations. In other words, we have  
14 enough E. Coli data to make that judgment on removing the fecal coliform. The other thing is right now our  
15 water quality regulations have RMHQ's that are expressed in fecal coliform bacteria standards. So, you just  
16 can't go in and remove an RMHQ in looking at a degradation standard which is impossible.  
17

18 The E. Coli criteria that EPA has proposed for recreational activities involving contact with the water is  
19 shown here. What they are proposing is going to depend on a geometric mean value as well as a single  
20 sample maximum allowable value. The geometric mean of 1.6 is based on that number providing a level of  
21 protection in the water bodies equal to (inaudible) per 1,000 (inaudible). That's the same illness rate that was  
22 used back in '68 when they developed the fecal coliform standards. Based on that geometric mean value  
23 then the corresponding single sample maximum allowable values are determined and they can be correlated  
24 back to the expected level of use of the water body going from a designated beach area all the way up to a  
25 frequent use (inaudible) 235 to 576.  
26

27 The (inaudible) by infrequent use. The best way to describe that is to think of a shallow stream where an  
28 individual may wade across it and may actually even sit in it. However, the potential for doing that actually  
29 to be able to immerse their whole body, stick their head under water is fairly unlikely. This is for  
30 recreational activities involving contact with water. EPA has proposed for those water bodies which are  
31 designated for non-contact water, non-contact recreational activities basically activities on top of the water,  
32 what has been proposed is a geometric mean value that would be five times the geometric mean value that's  
33 been proposed for water contact recreational activities. So that would be 630 per 100 ml/L.  
34

35 What we have proposed and is basically outlined in the petition is for those designated water bodies, by  
36 designated I mean our major rivers and water bodies in the State, if they have a designated beach area the  
37 new E. Coli bacteria would consist of a geometric mean value of 1.6 and that would be calculated over an  
38 annual basis. In the recent guidance that the EPA has put out they're not saying that the geometric means has  
39 to be based on 30 day period anymore. They're allowing the states and authorized Tribes some leeway in  
40 terms of what that geometric mean value will be calculated over. We are proposing on an annual basis. So  
41 for a water body with a designated beach area, geometric mean (inaudible) would be a value of 1.6, single  
42 value of 235. Those particular limits would apply to Lahontan Reservoir, Topaz Lake, Walker Lake, and the  
43 reaches of the Colorado and below Hoover Dam, below Davis Dam and in Exhibit 8 we're proposing the  
44 second one, Section 50. Right now in the petition that we submitted the Humboldt River, which is the reach  
45 of the Humboldt River in NAC 445A.208, which is from Imlay to (inaudible). That particular reach of the  
46 Humboldt includes Rye Patch Reservoir and we feel that we should propose a E. Coli single value standard  
47 certifying that reach (inaudible) and what was the reason (inaudible). For the rivers system (inaudible) a  
48 designated beach area what we have proposed is an annual geometric mean of 126 and a single value of 410.  
49 Although most of the river systems in Nevada do have shallow flows in certain time periods of the year, they  
50 still have enough water they can create pools or they may have sand bar or on one side of the sand bar is  
51 really shallow and the other side it's deep enough where people could potentially go swimming and have full  
52 body immersion. So we're proposing that the 410 number there for those particular water bodies. For the

1 Virgin and the Muddy, what we're proposing there is the recommended annual geometric mean of 630 with  
2 no single sample value.

3  
4 To reiterate what Randy previously mentioned those water quality standards which are not proposed to be  
5 included in this bacterial water quality standard revision of our class waters, Lake Tahoe and tributaries as  
6 well as Lake Mead, Las Vegas Wash and the water bodies on authorized Indian Tribal lands.

7  
8 Commissioner Reavis stated I'm confused about the breakdown in the full body contact use. Has EPA  
9 promulgated some sort of criteria for these so that it is easy to identify which use is which? I'm not used to a  
10 breakdown of full body contact.

11  
12 Mr. Comba stated right. Generally it has always been just one single value.

13  
14 Commissioner Reavis stated this is totally new.

15  
16 Mr. Comba stated as a matter of fact like with ammonia, each case seems to be getting into equations more  
17 and more. These single sample values are actually calculated based on a confidence interval which they refer  
18 to as a certain percentile. That percentile is based on an amount like your annual geometric mean is. It could  
19 actually go into an equation that calculates these values . . .

20  
21 Commissioner Reavis stated I'm more interested in how they breakdown designated beach area. That means  
22 that there is a designated beach area in a stretch. Designated by whom?

23  
24 Mr. Comba stated we had interpreted it would be a beach area which would be used by the public on a  
25 regular basis. I see your point.

26  
27 Commissioner Reavis stated I think there's a lot of "gray" and "iffy" in between these uses and I'm  
28 concerned about who decides what that use is and then on the Humboldt say, "Yes, we've got beach areas on  
29 the Humboldt." It kind of strains my imagination.

30  
31 Mr. Comba stated the majority of the Humboldt will be in a light use of 410. The only reach on the  
32 Humboldt that we're proposing a 235 would be Rye Patch Reservoir.

33  
34 Commissioner Reavis stated at Rye Patch.

35  
36 Mr. Comba stated where you could detect, people go water skiing, I mean you expect during the summer to  
37 have on a daily basis people swimming in the water having full body immersion.

38  
39 Mr. Pahl stated the other thing to note about the Humboldt was some of these standards had been previously  
40 incorporated except they used the one, they have a 126 geometric mean and a 406 for the single value  
41 already in our standards on the Humboldt. I think it's around 208 or something like that in the regulations.  
42 So we're just going in and updating that a little bit. That had been based upon some earlier guidance from  
43 EPA. We really struggled with how do we decide what goes where, but basically the designated beach we  
44 just decided if we had a park there, Topaz Lake, you know if there's like Douglas County has a park, there's  
45 a state park at Rye Patch, Walker Lake, you know we have some state facilities there, where there's known  
46 and encouraged swimming, developed swimming, that's why we tried to put that designated beach  
47 requirement.

48  
49 Commissioner Reavis stated it appears to me that you're really verging on a establishing a new beneficial use  
50 by breaking these things down.

51  
52 Mr. Paul stated no, it's still protection of contact with the water, which we've always had in the regulations,  
53 water contact which includes swimming.

1 Commissioner Reavis asked well let me ask you then, do you have real solid criteria that anyone could go to  
2 a stretch and say, "Alright, here is the use for this segment?"

3  
4 Mr. Paul answered no, to decide, "Well should this be an infrequent use or in light use?" Is that . . .

5  
6 Commissioner Reavis stated then it becomes kind of a subjective . . .

7  
8 Mr. Paul stated well, yes and really all we had to work off of was we knew that on the Humboldt they went  
9 with the light use. I mean at one time we were looking at doing moderate use for all of the rivers because I  
10 mean if you go down to the Carson River just down from my house I see kids swimming in there all the time  
11 but it's not really a designated beach area. We really did not have any data to go one way or the other. We  
12 felt just using our best judgment that if you go 576 considering that this is a human health problem or  
13 potential problem that we wanted to be more protective for human health than just taking the bare minimum  
14 of that infrequent use. So at this time we were proposing to use 410 unless we had a beach like Walker,  
15 Topaz or Rye Patch. We presented this out in the public hoping to get some input from people on this,  
16 people that lived in these areas, they could tell us, "Yeah, nobody swims there" or "People are swimming  
17 there all the time." But we really didn't get any kind of feedback like that at all.

18  
19 Commissioner Reavis asked do you have any idea at this time what this is going to do to the 303D report as  
20 opposed to using the fecal coliform? Are we going to put more stretches in non-attainment?

21  
22 Mr. Pahl stated the fecal coliform is really a poor indicator for potentials for illness and we need to go to E.  
23 Coli, which is a much better indicator. Where you set that you know is maybe debatable. Paul looked at  
24 data from 1997 to 2001 with these criteria and we saw some exceedences on a couple of segments of the  
25 Carson, Salmon Creek Falls, Shoshone Creek, and East Fork Owyee and Sweetwater Creek. What is  
26 important to realize, I think half of those would be listed anyway because they were exceeding that 126  
27 geometric mean which applies to all water bodies regardless of what level of use you have. So for some of  
28 those water bodies it may be a non-issue because if you're exceeding that geometric mean, it's going on the  
29 list even if you're not exceeding those others. That's how we evaluate these things. There are some, I think  
30 the Carson, where it's not exceeding the geometric mean, but it's exceeding that 410.

31  
32 Mr. Comba stated if I could call your attention to the rationale that I believe you all received as Exhibit 5. If  
33 you turn to page 11, the Bureau of Water Quality Planning since the early '90's began to collect E. Coli data  
34 from all our surface monitoring networks. What I've done here is taken those E. Coli values from the time  
35 period 1997 to 2001, calculated how many exceedences you would have of the 235, the 298, the 410 and 576  
36 proposed standards. The white un-shaded boxes are what we are proposing as our standard and then the dark  
37 shaded ones are just the exceedences of that criteria. So if you look at the West Fork to Paynesville out of 29  
38 samples we had 2 exceeding the 235, 2 exceeding 298, 2 exceeding 410 and 0 exceeding 576. So essentially  
39 two of those samples were higher than three of them. Where we do see exceedences is on the Carson River  
40 system. That would be Carson at Weeks, there is 14 percent exceedence. Shoshone Creek again, if we use a  
41 10 percent exceedence rate as the gauge on whether that's going to impact our 303D listing, yes we are going  
42 to have some potential exceedences of the E. Coli, not of the fecal coliform at this point.

43  
44 Commissioner Ricci stated if I recall you said that you were going to set Virgin and Muddy at 410. Is that  
45 correct?

46  
47 Mr. Comba answered the Virgin and Muddy are designated as non-contact recreation so they would just have  
48 a single annual geometric mean of 630.

49  
50 Commissioner Ricci stated so you're making the assumption that nobody ever goes into the Virgin or the  
51 Muddy Rivers. I guess I'm missing the distinction between that and why Rye Patch is considered differently.  
52 Mr. Pahl stated that is something we tried to address and looking back at the original rationale that was put  
53 forward when the standards for the Muddy and the Virginia Rivers were developed. There's really no paper

1 trail on just why those particular river systems were designated as non-contact recreation. We were hoping  
2 we would get more input from the public when we held our workshop down here in Las Vegas but we didn't.  
3 I think when we do our triennial review of the Muddy and the Virgin River system which is going to  
4 probably be within the next couple of years that will certainly be one of the major items to address is are  
5 those designated uses in terms of human recreational activities actually realistic?  
6

7 Commissioner Ricci stated getting back to what Mr. Reavis had mentioned earlier about who designates it  
8 and how, when these are looked at is the potential of the number of people to come into contact considered  
9 also? And why I ask that is because if you look at the area where the Virgin River and the Muddy River are  
10 there is a tremendous amount of more people that could come into contact with that water than potentially  
11 could come into contact at Rye Patch. I don't know if those kinds of things are considered in which one of  
12 those four categories it would fall.  
13

14 Mr. Pahl stated what it still comes back to is that for the Muddy and the Virgin we have no designated use for  
15 contact recreation. Whether it's right or wrong at this time we didn't want to go there until we get into detail.  
16 You know when you've got potential for use, you want to go somewhere on that range. The more use likely  
17 the farther to the left you're going to go. The less likely the farther to the right.  
18

19 Commissioner Henderson stated first of all I would like to congratulate staff for putting together this briefing  
20 packet. It was very helpful. This is a subject that caught my attention and I appreciate it. I had started a list  
21 of questions as I went through the packet and when I got to here I got most of them answered. If I  
22 understood Paul correctly, this analysis table in Exhibit 5 starting on page 11, I was interested in what would  
23 throw it into a non-exceedence category and I think you mentioned a 10 percent deficiency in samples. Is  
24 that part of your regulations here?  
25

26 Mr. Pahl stated no. The 10 percent comes from our methodology that we've established for creating the  
27 303D list of impaired waters. For a water body to go on this list basically we look at all the data. If more  
28 than 10 percent of the time that criteria is exceeded then it goes on the list.  
29

30 Commissioner Henderson stated I see. If this regulation was to move ahead as you propose, let's take page  
31 11 East Fork at Paynesville, you had two exceedences under the light-use water contact criteria, would that  
32 mean, based upon this data, that that water body in that location would not be meeting the water quality  
33 standards?  
34

35 Mr. Pahl stated no. It's less than 10 percent. So it would not go on the list. It has to be more than 10  
36 percent. If it had three exceedences . . .  
37

38 Commissioner Henderson asked and that's going to be your threshold if it's an impaired water then you will  
39 do action to try to remedy that status?  
40

41 Mr. Pahl answered a voluntary action.  
42

43 Commissioner Henderson stated I did have a follow up question and it's specific to the Rye Patch Reservoir  
44 issue that you're proposing in Exhibit 8. Have you had any medical records of any illnesses disclosed from  
45 recreational use in Rye Patch due to bacteria?  
46

47 Mr. Pahl stated we checked and they are currently meeting this standard. If we set the 126 and the 235  
48 they're meeting that now. So we are not finding any exceedences except in these few places where we're  
49 talking about. There again we don't have any evidence one way or the other if there have been illnesses as a  
50 result in the Carson River, Shoshone Creek or anything like that.  
51

52 Commissioner Henderson asked does the Health Division keep any records of that nature that you know of?  
53 That you've looked at?  
53

1 Mr. Pahl answered I'm not aware of any. There wasn't anything like that that we looked at and that  
2 threshold is, we just finished this long process of updating our 303D list and I mean there's a number of  
3 issues related to "Do you really have a enough data and accuracy of your sampling too?" So when you set  
4 these thresholds you try to keep that in mind. But we do have to set some sort of a cut, and the 10 percent  
5 was a threshold that's pretty much throughout the country.

6  
7 Commissioner Henderson asked let's say that you designate a water through bacteria monitoring and you  
8 exceed it and it is impaired, is there a way to go back and try to determine what the contributing factors are  
9 of that bacteria?

10  
11 Mr. Pahl answered no. They've done a lot of studies in the Las Vegas Wash and found a lot of bacteria in the  
12 Wash due to the bird population. There are ways to do bacteria tracing. I'm not very conversant on it. But to  
13 determine if it's coming from septic tanks or animal causes.

14  
15 Commissioner Crawford asked what about on interstate waters? For example will California have similar  
16 criteria at Topaz and both upstream and downstream? Are we managing for one thing, and they're managing  
17 for another?

18  
19 Mr. Pahl answered we're inconsistent in that we have had a lot of conversations with the Lahontan Regional  
20 Board in California on getting consistent standards. Tahoe is kind of our main focus, but we have had  
21 conversations with them on the Truckee River. Our standards are way different on one side of the state line  
22 versus the other side of the state line, same with the Carson and the Walker and we're very aware of that and  
23 are working as best we can to try to remedy that. It's just it won't be easy because their approach has been  
24 totally different than ours. They do this mean of monthly means that's this ever-growing lump of data starting  
25 back to 1970 and it's not like a moving average, it's this growing average and I think it's totally unrealistic. So  
26 we have some issues to try to figure out how our standards could be jiving with theirs.

27  
28 Commissioner Crawford asked are our standards taking into account that we may be starting at a place when  
29 waters enter the State that are already not as good as the standards we're expecting?

30  
31 Mr. Pahl answered well yes, a number of these locations are at the state lines.

32  
33 Commissioner Crawford stated if the values here are higher or lower, whatever the case may be, at Bridgeport  
34 Reservoir. They're worse there than what we're expecting them to be at the state line. Are we taking that into  
35 account?

36  
37 Mr. Pahl stated well if it's exceeding the standard at the state line more than 10 percent of the time we still put  
38 it on the list and identify it basically as California needs to do something to address this problem and we try to  
39 work with them. But it's really their responsibility to develop the TMDL and the Water Quality Management  
40 Plan to address that problem but it's important for us to note that on our 303D list.

41  
42 Commissioner Crawford asked are you monitoring at these locations?

43  
44 Mr. Pahl answered yes.

45  
46 Commissioner Crawford asked how frequently?

47  
48 Mr. Pahl answered it depends. The Truckee River is once a month. The Humboldt River is six times a year.  
49 Carson six times a year. Walker six times a year. The Snake River Basin is probably the least frequent, I think  
50 three times a year. But most of them are 4, 6, and 12.

51  
52 Commissioner Crawford asked who are we regulating with this regulation? Who are the guidelines for?

1 Mr. Pahl answered well first we're regulating any source. What we're doing is trying to protect the use. That's  
2 the bottom line.  
3  
4 Commissioner Crawford stated okay. But the guidelines are for the Division's use?  
5  
6 Mr. Pahl answered yes.  
7  
8 Commissioner Crawford asked to make determinations on whether there is non-attainment or whatever?  
9  
10 Mr. Pahl answered yes. These same numbers get used by the Bureau of Water Pollution Control in setting  
11 permit limits. But we also use them when a water body gets on the 303D list we try to address that in  
12 developing TMDL's and water quality management strategy in trying to deal with it. What's happening at the  
13 national level is, if you're familiar with 319 funds, that's our non-point source grant money we get from EPA.  
14 We are getting more and more requirements on how we use that money and they're really wanting that 319  
15 money to focus on water bodies that are on this list of impaired waters. So to answer your question, a body, if it  
16 exceeds the standards it goes on a list, we try to target that water body with grant funds for voluntary actions or  
17 if there is a point discharge, then the permitting people get involved.  
18  
19 Commissioner Reavis stated that kind of gets back to my point that, should you be putting more impaired  
20 stretches on the 303D list if you're not getting resources to address them and then particularly if they're  
21 impossible to address because of livestock being the primary source of the bacteria in a stretch?  
22  
23 Mr. Pahl stated well you hit on a big point. We did a lot of soul-searching in the development of this list. I can  
24 point to almost everything on that list and say it's either a water quality standard problem, phosphorus. We've  
25 got bad standards there that we need to update. You know we wonder about the suitability of some of the  
26 beneficial uses. The aquatic life is just one number. It maybe needs to be more stratified. All of these things  
27 come up and we realize that the magnitude of the problems. Can we really deal with them? I personally felt  
28 my philosophy on this list, and I think it may be different from people before me, was let's identify to the extent  
29 possible those waters that are not meeting the standards and then from there try to sort out where we realize  
30 they're not meeting the standards. That does not mean they're necessarily impaired. It just means they're not  
31 meeting the standards. The next step, and this came out of some national research, the science commission  
32 looking at the TMDL program, and they recommend that before you do a TMDL you evaluate the quality of  
33 your standards. So I mean that comes down to resources again. Do we have the resources to deal with some of  
34 these? No we don't. But I think it would be negligent of us not to identify those waters that aren't meeting the  
35 standards and put them there as a placeholder and say, "Well, here's really the problems we've got out there.  
36 It's not this, it's this. Let's just start picking away at them."  
37  
38 Commissioner Reavis stated I guess my problem is putting more impaired stretches on that list than what we  
39 have and saying, "Well, yeah, we don't have any money to do anything about those, but we're going to put  
40 them out there for EPA to hammer us with."  
41  
42 Mr. Pahl stated right. Well they're not going to hammer us.  
43  
44 Commissioner Johnson stated two points, one I want to go back to the problem interstate waters. Are there  
45 California stretches that with their standards, they're reporting as on their 303D list and when they come to  
46 Nevada they're now unimpaired?  
47  
48 Mr. Pahl stated I am not aware of any of their water bodies being impaired for bacteria.  
49  
50 Commissioner Johnson stated I'm thinking of the way where we evaluate a different method than they do.  
51  
52 Mr. Pahl stated oh, yeah.  
53

1 Commissioner Johnson stated I don't particularly about the different method, but product of the method if  
2 they're identifying an impaired water and then when it comes across the border it's not impaired, then maybe  
3 we need to consider that.  
4

5 Mr. Pahl stated well, yeah, definitely. That's one of the issues that's been nationally with the 303D list is that  
6 each state has its own methodology. Each state has its own standards and they may be different, then each state  
7 is going to evaluate their data differently and definitely come up with different lists.  
8

9 Commissioner Johnson stated and secondly I'd like to applaud you for evaluating on whether it's identified as  
10 impaired even though we don't have the resources because if you don't identify them and say we only have "x"  
11 miles on the list, you generate no priority in demand to increase the funding at some time.  
12

13 Mr. Pahl stated it can be, thank you, it's still a double-edged sword. . .  
14

15 Commissioner Johnson stated yes.  
16

17 Mr. Pahl stated but I felt it was important.  
18

19 Commissioner Doppe stated I'd like to follow up on that too. It strikes me as though the listing of a water area  
20 as to whether it's impaired or not is entirely dependent on whether or not we have the money to do something  
21 about it. It either is or it isn't with regard to error. I think he made a fairly poignant case that that should be a  
22 fairly black and white analysis and I believe that then it becomes incumbent upon policy makers and whatnot to  
23 allocate the priority in fixing those waters that don't meet the definition. But I think our only choice is to keep  
24 those two activities independent. Well, independent, let me put it this way, to keep the listing uninfluenced by  
25 whether or not we actually have the resources to tackle the problem. I think you have to identify it first.  
26

27 Mr. Pahl stated I agree.  
28

29 Vice Chairman Coyner asked shall we move to ammonia?  
30

31 Mr. Comba stated when we start talking about ammonia what we're concerned about is basically two forms of  
32 ammonia in solution: the un-ionized ammonia and the ammonium ion. The combination of the two is what's  
33 referred to as total ammonia. Ammonia is important because due to the absorption and the build-up of  
34 ammonia in fish it oftentimes can result in toxicity effects of the aquatic life. So ammonia criteria exists in our  
35 water quality regulations for the protection of aquatic life. Now on this particular petition what we are  
36 proposing is to remove our existing ammonia standard and replace it with the new ammonia standard that I'm  
37 going to talk about.  
38

39 As I mentioned ammonia water quality criteria are contained in the Nevada regulations for protection of aquatic  
40 life. The current criteria in the regulations are .02 mg/l un-ionized ammonia for a cold-water fishery, and .06  
41 mg/l un-ionized ammonia for a warm-water fishery. These are based on EPA recommendations made back in  
42 1976 in the Red Book. They were expressed as un-ionized ammonia because un-ionized ammonia is the more  
43 toxic form of ammonia present in solution. However, what EPA has found in going back and looking at their  
44 toxicity data from previous studies, as well as new studies, is they have found out that total ammonia in solution  
45 is actually a better indicator for protecting aquatic life. So the proposed new ammonia criteria that EPA has  
46 proposed is the total ammonia criteria expressed as milligrams nitrogen milligrams per liter and it would be a  
47 site-specific determination rather than a constant single value. What I mean by a site-specific determination is  
48 they are proposing standards that are equations. In other words, based on pH and temperature of a water body,  
49 you would calculate what the applicable criteria would be.  
50

51 This new ammonia criteria consists of acute limits and chronic limits. The acute limit being established to  
52 protect aquatic life at short-term exposures to a high concentration of pollutant and chronic being established to  
53 protect aquatic life at a long-term exposure to a low concentration of ammonia. The acute criteria equations

1 that I eluded to are basically a function of pH and separate equations exist depend on whether you have a cold-  
2 water fishery or a warm-water fishery. For the chronic criteria, those particular equations are based on the pH  
3 and temperature of the water body and they are differentiated depending on whether fishery life stages are  
4 present or not. So in other words the chronic limits of the ammonia water criteria no longer differentiates  
5 between cold water and warm water fisheries. It applies basically to both and, instead, depends on whether  
6 there are fishery life stages present or not.  
7

8 I'm not going to get into discussing the ammonia equations right now. They are in the petition package there,  
9 but one can use those equations to generate these following curves. What's shown here is total ammonia  
10 criteria as nitrogen milligrams per liter versus the water quality pH and using those equations you can generate  
11 what the corresponding acute criteria would be as a function of pH and then also use the warm-water equation  
12 to generate the corresponding warm-water ammonia criteria. Overall what we see is that the cold-water  
13 ammonia acute criteria is more restrictive than the warm-water criteria. Both criterions become more restrictive  
14 as the water pH increases.  
15

16 In a similar fashion we can use the equations that have been put out for the chronic criteria to develop these  
17 following curves. In the rationale document for ammonia I believe it's page 25 is this particular curve. You're  
18 able to generate the curve for the criteria as a function of pH for the various temperature ranges. Now for when  
19 fishery life stages are present that particular equation to affect the temperature is pretty negligible from 0 to  
20 14°C. As the temperature increases the criteria becomes more restrictive, it becomes lower and also for each  
21 particular temperature range the criteria becomes more restrictive as the function of the water body pH.  
22

23 What is proposed at this point is for our designated water bodies, both tables that are in our regulations, would  
24 be to remove the un-ionized ammonia standards from those regulations so it would entail removing the .02  
25 or the .06 mg/l standard. A new total ammonia standard would be put in its place and what we have proposed is to  
26 include a new regulation in our water quality surface water regulations that would contain the ammonia  
27 standards. What that particular regulation would be is a table of the acute as well as the chronic criteria and this  
28 is just an abridged version, the actual ones are shown in the rationale document again starting on page 5 being  
29 the acute ammonia criteria for fresh water aquatic life protection. That new ammonia regulation would contain  
30 these tables. So based on the pH of the water body one could determine what the applicable criteria would be.  
31 Then when the water quality samples confirm ammonia that would be the pH measured in the field. You'd  
32 come across and find what your criteria should be based on the ammonia concentration in your solution then  
33 you could make an evaluation on whether your water body is in compliance with the standard or not. So you  
34 would have your acute criteria and then you would also have the tables for chronic criteria in those new  
35 ammonia regulations. Those chronic criteria tables are shown on pages 7 and 8. Chronic criteria would  
36 involve an individual having measured the pH and temperature of the water body and then determining the  
37 applicable criteria. The new regulation would also contain the equations for someone who is interested to be  
38 able to calculate the criteria themselves, say in case you have pH that didn't fall between 7 or 7.2.  
39

40 Commissioner Johnson stated it's kind of nit-picky but aren't you perpetuating the same problem that you did  
41 away with in the pH standard by going to three-place accuracy with two-place numbers? You have 6.2 pH and  
42 7° temperature and you go to 10.8.  
43

44 Mr. Comba asked in the tables?

45  
46 Commissioner Johnson answered yes.  
47

48 Mr. Comba stated if you measured the pH and it was actually 6.54, you could take that pH value, plug it into  
49 your equation and actually calculate what would be the exact acute ammonia criteria. What we are doing here  
50 with this table is more or less just providing an overview for an individual to if they needed to get a pretty good  
51 idea, 90 percent accuracy on what the criteria would be. For regulatory purposes, we would actually calculate  
52 the criteria based on the pH. Same thing with temperature when you start talking the chronic criteria.  
53

1 The water bodies that aren't proposed to be changed to include the new total ammonia criteria are shown here.  
2 Class of waters Lake Tahoe, Lake Mead right now has an un-ionized ammonia standard on it that provides  
3 spatial and temporal protection for aquatic life and it's based on certain monitoring points. Simply replacing  
4 that with a new total ammonia standard isn't that simple. It's going to take a lot more in-depth analysis of the  
5 lake to come up with the right criteria. The Las Vegas Wash doesn't contain beneficial uses as strictly as say  
6 fish. In other words the actual benefits of the use for the Wash, in regards to aquatic life, is just aquatic life  
7 excluding fish. So there's no use in assigning an ammonia criteria to protect fish if the Wash isn't even  
8 designated to support fisheries. There isn't a seasonal TMDL on the wash right now and before we make any  
9 changes or propose any new ammonia criteria to the Wash we'd have to address the TMDL issue. Once again  
10 the water bodies have fallen, authorized Indian Tribal lands aren't proposed to be changed.

11  
12 Commissioner Henderson asked from your perspective and familiarity with Nevada water quality, what are the  
13 major sources of ammonia in waterways?

14  
15 Mr. Comba answered if you break down organic matter in the water body, the major sources are nitrogen-based  
16 compounds, and those are the major ones.

17  
18 Commissioner Henderson asked by-product of decomposing basically organic matters?

19  
20 Mr. Comba answered correct, nitrogen-based organic matter in the water.

21  
22 Commissioner Henderson asked have you done any analysis with the data that you have much like what was  
23 done with the bacteria standards? If this standard or approach was implemented how that would affect your  
24 impaired water designations?

25  
26 Mr. Comba answered yes. However, on the majority almost 100 percent of the time on the monitoring samples  
27 that are detected in our surface water bodies, they are below analytical detection limits and that analytical  
28 detection limit is .1 mg/l ammonia. So we're getting back analyses that are saying non-detectable. So it's hard  
29 to compare it to an actual standard for proposed criteria.

30  
31 Vice Chairman Coyner called for further questions from the Commission. There were none. He called  
32 for public comment.

33  
34 Mr. Mahal stated well I know you've had a long day. I'm a little older than most of you and I was on my  
35 computer until 3:30 so I've had a really long day. And I didn't come here just for the hell of it. I don't get paid  
36 to come here. I come here because I have an interest in the lives that people live in whatever community and  
37 where I'm at and where I used to do business. I have a couple of things. Your first presenter said only one  
38 person came to the hearing in Las Vegas. That's understandable. We have been through zillions of hours of  
39 hearings and meetings on things like air quality, PM 10, you name it here, water quality. Nothing happens. So  
40 what's happened, people have just pretty much given up. There must be something wrong with me. I still  
41 come out. I don't know what it is but I'm going to give it one more shot. You had a discussion here on public  
42 hearings, Mark brought it up. I've attended a lot of public hearings in my life having been in the business. I've  
43 attended a lot of them since I've been here. I have to tell you because Clark County in 1987 decided to put the  
44 3 minute rule on they blew a \$750 billion budget and they ended up short 600 classroom buildings and they  
45 hired and they built wood fire trap buildings. We had a team of very credible people that went over everything.  
46 We sat down with them to show them we're willing to work with them and somebody decided a 3 minute rule.

47  
48 I have to tell you if you don't want to sit on public boards and listen to people talk as individuals about their  
49 concerns then you probably shouldn't sit on them. I know it's a long, tiresome, disturbing thing and I know a  
50 lot of times you get people totally frustrated, totally off-the-wall. But somewhere in all of this there will be  
51 some people who have something meaningful and I would suggest to any of you who are considering doing  
52 something about public hearings, that you sit through a Public Utility Commission hearing in one of our

1 neighborhoods. I have never seen three people more patient in my life than those people are and they get some  
2 very good testimony; excellent testimony when they allow the people to be heard. What I find is interesting,  
3 governors have select committees, mayors have select committees, everybody's setting to find out what should  
4 be done and then in the end aren't we always talking about "we the people" that are going to be impacted?  
5

6 Vice Chairman Coyner stated Ken, this is for public comment at the end and this particular point of the meeting  
7 we're working with this petition 2002-10. We would really like to get that behind us. There's an opportunity  
8 later in the meeting. There are other people that are waiting to deal with the FOAV's.  
9

10 Vice Chairman Coyner called for further public comment to Petition 2002-10. There was none. He declared  
11 the public comment closed. He called for a motion.  
12

13 **Commissioner Doppe motioned to approve 2002-10 with the repeal of Section 5 as presented by staff. I  
14 want to make a couple of comments, specifically I think Section 5 should come out. I don't know that  
15 you have any other regulations where you actually go ahead and post the underlying federal document as  
16 part of our regulation and as you point out it makes it such that technically you have to amend it every  
17 couple of weeks to keep it current otherwise it's obsolete. I believe that the provision for E. Coli, I don't  
18 have any problem passing it, I think it's a good idea. It's a better indicator. I think we should do it. I'm  
19 (inaudible) about pH and ammonia, although I support where you're headed. My concern lies in that  
20 the move to 6.5 to 9.0 for pH is kind of a one-standard-fits-all approach and the formula presented is  
21 kind of a one-formula-fits-all approach with regard to ammonia. I think at some point the science is  
22 going to get better than that to say that the individual requirements of the aquatic life inside the  
23 respective water areas may not fall so neatly into such predetermined boxes. I recognize that the science  
24 isn't there and we don't have the money to go out and create that science ourselves. So we have to come  
25 up with the best, most practical standard that we have today and I think we've probably done it. Based  
26 on that, I'm going to support them.  
27**

28 Vice Chairman Coyner stated there are two suggestions by staff, the removal of Section 5 and the small  
29 revision in Section 50. Are you in agreement with that with your motion?  
30

31 **Commissioner Doppe stated yes.**  
32

33 **Commissioner Johnson seconded the motion.**  
34

35 Vice Chairman Coyner called for discussion on the motion.  
36

37 **Mr. Pahl stated I just wanted to mention that we do have these RMHQ's which are a measure that we  
38 use for protecting from anti-degradation. While we have a pH standard of 6.5 to 9, many of our water  
39 bodies will have a pH RMHQ which is narrower to protect them.**  
40

41 **Commissioner Reavis stated I have a substantial problem with the breakdown in the total body contact  
42 beneficial use in that it appears to be so subjective that I would think since it does form the basis for  
43 permits, discharge permits that are issued, we'd wind up with a lot of appeals saying, "You know this  
44 was just his feeling."  
45**

46 **Mr. Pahl stated what the permitting people use for setting the E. Coli limitation is the 126 which is not  
47 dependent upon any level of use that we set here. So they use the 126. They're using the 126 already.**  
48

49 **Commissioner Henderson asked that's in reference to the point source program?**  
50

51 **Mr. Pahl answered in the point source program, yes. It doesn't affect the permitting program.**  
52

1 Commissioner Doppe stated you've brought up a good point earlier when you mentioned the fact that  
2 you haven't created a new beneficial use here. Would you fill in my gaps on it? One beneficial use is  
3 recreational use right? Am I wrong in understanding that right now that is not segregated into two  
4 components: in the water and out of the water?  
5

6 Mr. Pahl answered yes it is. We have two components. We have contact with the water, which could  
7 include (inaudible) and then we have the non-contact.  
8

9 Commissioner Doppe stated I know you have them in here, but has that been one that we've looked at  
10 before? Have you broken it down like that before?  
11

12 Mr. Pahl answered yes, it's been that way for 30 years.  
13

14 Commissioner Doppe asked fishable, swimmable, kind of thing? Is that what I'm hearing?  
15

16 Mr. Pahl answered right. The fact that we've had two different contact levels for recreation has been  
17 there for a long time.  
18

19 Commissioner Doppe asked so we haven't created a new beneficial use?  
20

21 Mr. Pahl answered no. We're not changing that for this petition at all. We are solely going with existing  
22 beneficial uses, no change.  
23

24 Commissioner Reavis stated I think I would argue that that's not technically true. One could argue that  
25 total body contact is total body contact no matter where you are and whether you're only one person or  
26 not and to divide that into four sections and say, "All right we're going to decide that the number ought  
27 to be this based upon our perception of how many people are using this or whether this is a beach or not"  
28 is a fairly large change and more difficult to defend. A lot more difficult to defend than saying, "All  
29 right, here's the standard for total body contact."  
30

31 Mr. Pahl stated well, I mean we're still protecting, it's kind of like our aquatic life use. That doesn't  
32 have the levels either and we try to protect for the most stringent situation possible with aquatic life.  
33 Granted, I agree, I mean there are opportunities here for refining our beneficial uses to be more specific  
34 on what we mean by this. But I believe that when we say recreation, we should just be protecting for any  
35 levels that are out there.  
36

37 Commissioner Johnson stated the problem of setting a varying four classes runs from 235 to 540 or  
38 whatever. I can understand the concept that the cumulative risk to the population is based on exposure  
39 which is numeric. But how do you explain to the one person that their individual risk is a lot higher in  
40 your 540 than it is in your 235? When my wife takes the kids to the swim in the river their risk is  
41 increased by having this different standard. The total population is based upon the total population use,  
42 but the individual risk and I agree with but I think that the issue of risk to the individual should be the  
43 concern on exposure, not the risk to the total population.  
44

45 Mr. Pahl stated I'm not sure how to respond to that.  
46

47 Commissioner Johnson stated I don't know that I've, it's an expression of concern. I don't know really  
48 how it, whether it would be better to have a single numeric value than the four classes. If this is what  
49 you're suggesting?  
50

51 Commissioner Reavis stated that's what I'm saying is that it's a lot more defensible in doing that  
52 because, again, it is so subjective. It's somebody's opinion as you go down that.  
53

1 Mr. Pahl stated we contemplated doing 235 across the board, but I don't think all these rivers are  
2 designated beach areas either, but all of them are still based upon 8 illnesses per 1,000. It's just as you  
3 get into the higher numbers it's increasing the risk somewhat more.  
4

5 Commissioner Henderson asked what is the default position if the State of Nevada did not promulgate  
6 some bacteria water quality standards? Did I see some reference in here that EPA might take some  
7 steps?  
8

9 Mr. Pahl answered that might have come from some other things. I mean that gets thrown around,  
10 that's always a possibility. I know that's kind of the last thing that they want to do.  
11

12 Commissioner Henderson asked there's nothing pending at this point?  
13

14 Mr. Pahl answered no.  
15

16 Commissioner Henderson asked no threshold deadline?  
17

18 Mr. Pahl answered no. You know the guidance has been out there for a long time so I know this is one of  
19 the priorities to try to get states to get E. Coli on the board.  
20

21 Commissioner Henderson stated I am in concurrence with the ammonia and the pH. I have concerns  
22 much like Mr. Reavis did on the bacteria defining. I would prefer to see a much more conservative  
23 approach than what's proposed here in that the issue is public health and to me there's not a  
24 demonstration of a nexus between some of these more restrictive standards and public health threat and  
25 because of that I'll probably vote against the motion.  
26

27 Commissioner Crawford asked do we have any non-impaired waters in Nevada for one reason or  
28 another?  
29

30 Mr. Pahl answered Lamoille Creek.  
31

32 Commissioner Crawford stated oh, there's a good track record.  
33

34 Mr. Pahl stated yes. I found in developing this 2002 list, if we had data chances are it's not meeting the  
35 standards because standards need updating.  
36

37 Commissioner Crawford stated some portion of just about every body of water in the State of Nevada is  
38 impaired.  
39

40 Mr. Pahl stated there's just a handful, you know maybe some tributaries up at Tahoe.  
41

42 Commissioner Crawford asked will adoption of this regulation increase the impaired waters list?  
43

44 Mr. Pahl answered just for the bacteria. No effect for pH. It's less restrictive. No effect on the list for  
45 ammonia either. It's just the E. Coli.  
46

47 Commissioner Ricci stated as I see more and more, if you just said that some of them are going to fall off,  
48 some of them will be added and your comment to Commissioner Crawford was maybe there's only one  
49 or two that are not impaired in the State. One only needs to look at it from the standpoint of somebody  
50 from the outside looking into Nevada saying, "Jeez, look, they're not doing anything over there and if  
51 they are it's moving at a snail's pace in trying to get some of these off the list because all we do is see  
52 more and more added to the list." The one thing that would be a concern to me if I were one of the users  
53 along one of these river systems that there's a potential for that use to cease in order to meet these water

1 quality standards from whatever they are doing and namely I'm thinking of agriculture purposes right  
2 off or somehow or another to keep the livestock or whatever away from the river or from certain fields  
3 where water comes back and gets into the river. So I'm not sure if there's anything in the future that  
4 setting these standards to these degrees, and I realize that you have a job to do. I'm not taking that  
5 away, but I would be very concerned if I were one of the water users along some of these stream systems  
6 that are now designated as being impaired.  
7

8 Mr. Pahl stated you know, there again, our program is voluntary. We've tried to deal with some of  
9 these, there are still a lot of issues out there.

10 Commissioner Ricci stated but voluntary to a certain point though because . . .

11 Mr. Pahl stated no, ours is voluntary.

12  
13 Commissioner Ricci stated no, I mean that doesn't preclude the federal government from ever saying,  
14 "Well you don't, it's no longer a voluntary program. Somebody has to do something."  
15

16  
17 Mr. Pahl stated the non-point source is voluntary nationally. Some of the states have taken some action  
18 to make it non-voluntary. So California has more of a regulatory non-point source program. But  
19 majority of the 50 states have a voluntary program like us because the national program is voluntary.  
20

21  
22 Commissioner Crawford asked when you say voluntary program, does the Division have any resources  
23 to address non-attainment waters?  
24

25 Mr. Pahl answered yes. The 319 grants that we get from EPA the amount of money is growing. But it's  
26 still way short of what's needed. But it is increasing and we have just received a whole pile of  
27 applications for projects. We might have about \$3 million this year to divvy up for projects and research  
28 and monitoring.  
29

30 Commissioner Crawford asked so you do, in designated waters and when there is a specific source you  
31 can participate in projects to try to (inaudible).  
32

33 Mr. Pahl answered yes, and people come to us. They have to have a 50 percent match. So I mean they  
34 have to believe in this project. They're not going to come to us unless they think it's a good thing,  
35 because they have to put up 50 percent of the money.  
36

37 Commissioner Crawford stated I didn't want to take a shot at Nevada because I would guess that for  
38 impaired waters in this country Nevada is probably not in any worse shape than anybody else.  
39

40 Mr. Pahl stated right. Every state has standards issues too. They've taken the standards, like the  
41 nutrients standards is my favorite one, because we know that there's phosphorus that's naturally  
42 occurring everywhere and it may not even be the problem. It might be nitrogen that's the problem. But  
43 phosphorus is our big one on our list where we need to put some resources into research and address  
44 that.  
45

46 Vice Chairman Coyner stated Commissioner Johnson I'm going to take your pulse. You sounded like  
47 you were eroding on the second to the motion based on Commissioner Reavis' questions about the . . .  
48

49 Commissioner Johnson stated no, I think I identified that it's a point of concern. I will be voting for the  
50 motion and my second and it's just a matter that I think it is something that we should look at in the  
51 future. But I think it's quite adequate at this time.  
52

1 **Vice Chairman Coyner called for further discussion by the Commission on the motion which would be**  
2 **for approval with the amendment as suggested by staff and in Section 5 and Section 50. He called for the**  
3 **vote.**

4  
5 **Vice Chairman Coyner voted aye.**  
6 **Commissioner Johnson voted aye.**  
7 **Commissioner Crawford voted aye.**  
8 **Commissioner Doppe voted aye.**  
9 **Commissioner Ricci voted aye.**  
10 **Commissioner Henderson voted nay.**  
11 **Commissioner Reavis voted nay.**

12  
13 **The motion carried.**

14  
15 **Vice Chairman Coyner stated I'd like to enter Exhibits 1 through 8 for the record without objection. So**  
16 **moved and approved.**

17  
18 Vice Chairman Coyner moved to **Agenda Item III. Settlement Agreements on Air Quality Violations**  
19 **A. All-Lite Aggregate.**

20  
21 Mike Yamada stated All-Lite Aggregate is a rock and sand operation located south of Lockwood, Storey  
22 County, Nevada near the south end of Largomarsino Canyon. They obtained their permit renewal on October  
23 24th. On August 13th I was responding to a request to monitor some fugitive dust problems out in the  
24 Lockwood area, meaning the Lockwood landfill and possibly All-Lite Aggregate. The Lockwood Landfill was  
25 in pretty good condition. All-Lite Aggregate was putting out quite a bit of fugitive dust. I approached the  
26 assistant plant manager and we took a tour of his site. All the operating equipment was extremely dusty. The  
27 roads were not being watered properly so there were quite a bit of huge plumes from the trucks coming off the  
28 top of the mountain. As we were touring the site, they stopped work that day for the day so I told them I would  
29 be back the following day and I asked him to look at the equipment because I didn't think all of the water  
30 sprays were working and most of the equipment just wasn't functioning properly and he needed to get some  
31 water trucks operating on the haul roads because they're extremely dusty. I showed up the next day with an  
32 inspector and they were still having the same problem. We got there around noon or so and I had the inspector  
33 take some readings of the equipment, some visual emission readings. We found that the ones that we could  
34 read, there were like four of them, the opacity ranged from 25 percent up to like 75 percent or more. At that  
35 point I shut them down. I have them a verbal order to shut down and told them that they needed to repair all of  
36 that equipment to get some water trucks on the site. On the 15th they dropped into our office said they had  
37 been working all night. They had fixed the equipment. They had water sprayers everywhere. They had dusted  
38 some of their conveyers better than they had been and they were confident they could run cleanly. So I had two  
39 inspectors go out and examine the operation and they had pretty much gotten it under control. So we lifted the  
40 stop order. They had rented an additional water truck and had gotten their haul road under control.

41  
42 On September 24th we held an enforcement conference with All-Lite and at that time we negotiated a  
43 penalty with them for \$14,280 for NOAV Nos. 1694 to 1698. We'd also issued two fugitive dust minor  
44 NOAVs which they paid. We also gave them a warning for not reporting the excess emissions that had been  
45 evidently going on for quite a while. It had been going on since May of this year. They also had not  
46 submitted a dust control plan to us. We gave them some guidelines and they submitted a very good dust  
47 control plan. I think if they follow that they won't have any trouble in the future. They are sending their  
48 people to VE School to learn how to read opacity because there was nobody on site that knew how to read  
49 the opacity. They're also training their people on the permit itself because the people, the plant manager ,and  
50 the assistant plant manager didn't know what the permit actually said about opacity. . So right now they're  
51 in compliance. They are doing a very good job and what I'm recommending is that you accept the  
52 negotiated penalty of \$14,280.

1 Commissioner Crawford asked when were the previous NOAV's?  
2  
3 Mr. Yamada answered on the 14th for the trucks that were coming down and we issued those first because  
4 they were minor.  
5  
6 Vice Chairman Coyner called for further questions. There were none. He called for a motion.  
7  
8 **Commissioner Reavis motioned to accept the settlement of NOAV 1694 through 1698.**  
9  
10 **Commissioner Crawford seconded the motion.**  
11  
12 **The motion carried unanimously.**  
13  
14 Vice Chairman Coyner moved to **Agenda Item VIII. B. Caesars Tahoe.**  
15  
16 Mr. Yamada stated I would like to introduce Mr. John S. Delikalakis from Park Place Entertainment and  
17 Linda Bullen, Attorney at Law for Lionel Sawyer and Collins. They represented Caesars Tahoe. I guess  
18 everybody knows where Caesars Tahoe is. It's up at Lake Tahoe at 55 Highway 50 at Stateline. Their  
19 violation stems from the permitting of two boilers which are permitted for both gas and diesel. It turned out  
20 that they permitted the diesel as a secondary backup fuel, but during the fuel crises back in 2001 and partially  
21 into 2002, the engineer at the plant wasn't really cognizant of his permit requirements and he basically ran  
22 about three times as much diesel through that and cut off the gas supply. It wasn't something that was  
23 sanctioned by Caesars itself, it was basically the plant engineer and he's no longer with them. I think he left  
24 shortly after the enforcement conference which we held on May 6, 2002. Since that time what they violated  
25 basically was the annual operating hours, the PM 10, the VOC, SO2, NOX and the CO emission limits  
26 because they overran the amount of diesel that they ran the total amount for the annual usage was exceeded.  
27 I met with Mr. Delikalakis and Linda Bullen on August 12, 2002 and we negotiated a settlement for the  
28 NOAV 1702 to 1712 for a penalty of \$18,700. They've come back to us with a permit submittal to modify  
29 the way they plan to run those boilers in the future. They are in compliance and they have taken some  
30 extraordinary procedures. They're going to institute some low NOX burners on their boilers and they've  
31 instituted a program for training their employees. I'm recommending acceptance of the settlement of  
32 \$18,700 for the violations.  
33  
34 Commissioner Ricci asked what happened to 1713? Or is that a typo on the bottom of page 1 there?  
35  
36 Mr. Yamada answered I think you're right. It might have fallen off when I was doing the printing.  
37  
38 Commissioner Ricci stated okay. That just looks like a typo then.  
39  
40 Mr. Yamada stated yes. It's 1702 to 1713.  
41  
42 Commissioner Ricci asked are the calculations for the violations of all of the pollutants based on a stack test?  
43 Or are they based on just a calculation based on . . . ?  
44  
45 Mr. Yamada answered it was an annual exceedence. It's what they turn in as their emissions to us on the  
46 annual basis.  
47  
48 Commissioner Ricci asked but they base that on a calculation of the fuel oil on the amount of emissions  
49 calculated from the fuel oil?  
50 Mr. Yamada answered right, on their emissions at their site.  
51  
52 Commissioner Ricci asked not an actual test?  
53

1 Mr. Yamada answered no.

2  
3 Commissioner Johnson asked just a question on the amended permit, is that simply that they've applied to  
4 operate longer on diesel?  
5

6 Mr. Yamada answered yes. My understanding is they came in and put a different number in there because  
7 before it was just a backup fuel for them. The number of hours that they were planning to run. But I think  
8 they just kind of factored in longer hours which is something that they have to model to make sure that the  
9 emissions stay within the limits.

10  
11 Commissioner Henderson stated I'm not too familiar with the penalty matrix, but I don't need explanation.  
12 Does this proposed fee provide any credit for the steps that have been taken by the . . . ?  
13

14 Mr. Yamada answered yes. If they had reported to us first we would normally give them up to 25 percent. If  
15 it is something that we discover and they are very cooperative, which they were, we reduce it by 50 percent.  
16

17 Vice Chairman Coyner called for further questions. There were none. He called for public comment. There  
18 were none. He called for the motion.  
19

20 **Commissioner Doppe motioned to accept the settlement for Notice of Violation 1702 to 1713.**

21  
22 **Commissioner Crawford seconded the motion.**

23  
24 **The motion carried unanimously.**

25  
26 Vice Chairman Coyner moved to **Agenda Item V. Status of Division of Environmental Protection's**  
27 **Programs and Policies.**  
28

29 Allen Biaggi introduced himself as the administrator of the Division of Environmental Protection. He stated  
30 the first thing I'd like to do is introduce to you Terre Maize, who is our new Las Vegas office manager.  
31 Terre joined us a week ago today. She's had an event-filled week including some staff negotiations, some  
32 training and lots of meetings. She comes to us with a wealth of experience in both the private and the public  
33 sector. She has worked for the Department of Energy Contractors. She has worked for the Clark County  
34 School District, a number of private consulting firms. We're very excited to have Terre on board and the  
35 expertise and experience she brings to us for managing our Las Vegas office and I'm sure you'll see Terre  
36 much more in the future so we want to welcome her.  
37

38 You'll remember at the last Environmental Commission meeting we introduced to you four students who  
39 were nominated by the Governor and who were participating in the Youth Watershed Summit in Washington  
40 D.C. in celebration of 30 years of the Clean Water Act. These students went there not only to learn about  
41 clean water and water quality activities, but they also made a presentation and put together a display of water  
42 quality issues in the State of Nevada. These four students, along with their teacher, decided to undertake the  
43 project of Walker Lake and make a little display and present that at the summit in a competition with 45  
44 other states. I'm very pleased to report that Nevada came in second in that competition and at the next  
45 Commission meeting in northern Nevada you'll have an opportunity to see their display and I think you'll be  
46 very surprised and pleased at how professional and how interactive it is and made a real splash back in  
47 Washington D.C. So I just wanted to give you that heads up and the Governor's office was very good. They  
48 met the Governor, had their picture taken with him, had a good conversation with him and I think it's a real  
49 plus in Nevada that these students did so well. They're wonderful kids, as you saw last meeting, and are  
50 really an asset and are pride of Nevada. I think it's a great accomplishment.  
51

52 Over the last couple of weeks we've accomplished something that has taken us about two years in the  
53 making and that's the reclassification of Area 61, hydrographic basin 61, which is the Boulder Valley in

1 northeastern Nevada. What we did through this action is split Area 61 into two components or two separate  
2 air sheds, one which will be triggered for PSD ultimately and one which will not. This will allow economic  
3 development opportunities within that basin and allows the installation of a gas pipeline from Utah through  
4 that portion of Nevada ultimately to western Nevada and also allows the installation potentially of a gas-fired  
5 power plant within that basin to serve not only some of the mining activities in the area, but also to serve the  
6 electrical grid for northeastern and northwestern Nevada. As I said, this was two years in the making and it  
7 is the first such split that has occurred in the country in about eight years. So it's rather precedent-setting and  
8 I want to thank the staff, especially Jolaine Johnson and Colleen Cripps for their hard work and dedication to  
9 this project in that time frame.

10  
11 The Laughlin power plant, the Mohave Generating Station has been of great concern I know to this body.  
12 We met a year ago last June and talked about changing opacity standards in light of the energy crunch that  
13 was ongoing at that time. As you'll recall there was a lawsuit that was filed by the Sierra Club and the Grand  
14 Canyon Trust and the ultimate settlement of that lawsuit which required the Mohave Generating Station to  
15 place controls on that plant by the end of calendar year 2005. The estimated cost of those controls was  
16 somewhere between \$300 and \$800 million, not an insignificant amount of money. Recently Mohave  
17 Generating Station, through their controlling entity which is Southern California Edison, filed a request  
18 before the California Public Utilities Commission to begin initiation of the expenditure of those costs. The  
19 Public Utilities Commission of California made a requirement that they have long-term contracts in place for  
20 both the coal and the water that is used to slurry that coal from their Arizona mines to the Laughlin  
21 Generating Station. The coal contracts are controlled by the Navajo and the Hopi Tribes and the water  
22 contracts are controlled by the State of Arizona and those tribes as well. Negotiations are not going well.  
23 There are significant hang-ups and it appears now that the PUC authorization for expenditure for those  
24 controls will not be forthcoming any time in the near future. What that means to us here in Nevada is that  
25 even if those authorizations were granted today, we would likely see a shut down of the Mohave Generating  
26 Station at the end of calendar year 2005. That means a loss in revenue to the Division of Environmental  
27 Protection through emission fees for the Air Quality program of about \$360,000. We have attempted to  
28 address that within our budgets. We have made the Governor's office aware of this as well as the legislature,  
29 but we may be seeing as much as, or as little as, one year of lost revenues. Ultimately if these contracts are  
30 not put into place the facility may shut down permanently.

31  
32 Commissioner Ricci asked when is the expiration of the coal contract? Does it pretty much coincide with the  
33 calendar year 2005?

34  
35 Mr. Biaggi answered it occurs before the end of calendar year 2005.

36  
37 Commissioner Ricci stated so they're between a rock and a hard place.

38  
39 Mr. Biaggi stated very much so. Not a good place to be in a negotiation position.

40  
41 Commissioner Johnson asked is it possible that the water rights may be worth more potentially in the near  
42 future than existing coal and water?

43  
44 Mr. Biaggi answered I don't know the answer to that. I don't know what the economics are. They are  
45 looking at all kinds of options from looking at water from outside of the basin that is controlled by the  
46 Navajos and the Hopis. They're looking to move the coal slurry operation into another basin on the  
47 Colorado River itself, which is about a \$100 million endeavor from my understanding. So there are all kinds  
48 of options on the table including water banking and water trading. None of those have come to fruition as of  
49 yet.

50  
51 The last item I have is that although he won't give me a straight-up answer, this may be David's last meeting.  
52 David is in the throes of potential retirement and he has been a tremendous asset to myself and to this  
53 Commission and if, in fact, this is David's last meeting, I want to wish him the best. I know you do too and

1 if it's not his last meeting, then we'll see him again. But I didn't want to go without at least mentioning that  
2 and that we'll be losing a very valuable staff member. So, David I want to thank you for all the work you've  
3 done and if you do actually go out and retire, I wish you the best.  
4

5 At that, if you've got any other questions of me about those issues or anything else going on with the  
6 Division, I'd be happy to try and answer them.  
7

8 Commissioner Ricci asked where is the division line in Boulder Flat as to the area that's subject to PSD and  
9 the area that is not?  
10

11 Mr. Biaggi answered I couldn't tell you right off the top of my head. It's about down the middle on a west to  
12 east line right about down the middle.  
13

14 Commissioner Ricci asked but the corridor around I-80 is the one that is not under the PSD jurisdiction  
15 right?  
16

17 Mr. Biaggi answered that's right. The northern half is not under the PSD jurisdiction. The southern half will  
18 be.  
19

20 Commissioner Ricci asked because the mine's already there in the northern part?  
21

22 Mr. Biaggi answered the mines are already in the northern part, right. So the gas-powered power generation  
23 system would go in the southern part of the basin.  
24

25 Commissioner Doppe asked can you tell me what's going on and if anything unusual with regard to storm  
26 water runoff enforcement here in southern Nevada?  
27

28 Mr. Biaggi explained there is what's called a Phase II of storm water requirements that have been  
29 implemented and initiated by EPA. Those are delegated down to the states to put into place. The state, for  
30 Clark County in turn, is delegating that down to the county and some of its local jurisdictions. Right now we  
31 are in the process of negotiating and working with Clark County in dealing with storm water related issues in  
32 southern Nevada particularly as they relate to construction sites to put best management practices in place to  
33 control sedimentation and run off from those construction activities.  
34

35 Commissioner Doppe asked are you aware of any large mines having been levied here recently? I keep  
36 hearing horror stories.  
37

38 Mr. Biaggi answered I'm not aware of any, but that doesn't mean there haven't been.  
39

40 Commissioner Doppe asked could you tell me who I could check with?  
41

42 Mr. Biaggi answered Leo Drozdoff in our office would be the appropriate person.  
43

44 Commissioner Doppe stated I've heard of a builder being fined \$171,000 and maybe they deserved it, but I'd  
45 at least like to be familiar with the circumstances on that.  
46

47 Mr. Biaggi stated I can tell you that if it was our office that initiated that fine, I'd know about it so I would  
48 guess that that's probably a local entity.  
49

50 Commissioner Doppe stated I've been living here for a long time and cumulatively I've never heard of  
51 \$171,000. So, that's huge.  
52

1 Vice Chairman Coyner called for further questions. There were none. He moved to public comment. He  
2 called upon Ken Mahal.

3  
4 Mr. Mahal stated I had a comment on the water quality issue. I noticed for some reason the Las Vegas Wash  
5 and Las Vegas bay is not included in their oversight on bacteria. I would suggest that Las Vegas Wash is  
6 probably the most consistent carrier of bacteria of almost any place in the State of Nevada. The record we  
7 have is 155 million gallons of treated sewage go down Las Vegas Wash every day into Las Vegas bay and of  
8 course past our pumping station where our water intake is and into Lake Mead. A few years back  
9 cryptosporidium was related to our water source and 40 some people died and any number of young people  
10 became very ill. We know for a fact that some of this bacteria cannot be treated in a water treatment plant. It  
11 just gets around everything. But more than that, my question was in their presentation what do they mean by  
12 water contact? If I drink the water am I contacting the water? Now if I'm drinking water from a treated  
13 plant that can carry E. Coli and can carry cryptosporidium or God know what else from all over the world,  
14 I'm a little concerned why this wasn't included in here.

15  
16 Vice Chairman Coyner stated well you're laboring under the assumption that it hasn't been. It wasn't  
17 addressed specifically in these particular petitions, but we've addressed the Wash at length in previous  
18 actions of this body. We have visited it. We're well aware of the problems with the Wash.

19  
20 Mr. Mahal stated no, my understanding was that these issues weren't included on the Wash.

21  
22 Vice Chairman Coyner stated just for these particular changes. But it has its own criteria and issues that are  
23 being dealt with.

24  
25 Mr. Mahal stated okay. That's all I was concerned about.

26  
27 Vice Chairman Coyner stated we've been out there. We've toured the Wash and looked at the Wash. I've  
28 been on a boat in the Wash and the bay. We're well aware of the problems.

29  
30 Mr. Mahal stated several years ago we finally had to talk to the park service and say, "If you're not going to  
31 put signs up there of no swimming, I'm going to take some of my people with their canes and their walkers  
32 out there and put the signs in" and they finally did put one or two signs out there because that water is not  
33 safe.

34  
35 Back on the air quality thing just quickly. We hear one story, but when you live here we see the other side of  
36 the story. If you were at all concerned about what is happening and I call it a lack of enforcement, you need  
37 only to look at Tameron Street out here when you drive out here when you drive out. All of the dirt and stuff  
38 is from track out. There was no enforcement on that. If you go out here to Decatur and if the construction  
39 was still going, you could see the dust and the dirty diesel on that site all the time. If you were, as I did when  
40 I went to lunch, if you were to go down Decatur to Harmon you'll see track out you'll see the dirt, the same  
41 kind of construction filth that is coming out constantly on the streets.

42  
43 We have an awful lot of attention here at the air quality control about airborne dust from vacant lots. Well I  
44 don't know if they define 5,000 acres under development a vacant lot or not. Our experience is that's where  
45 most of it comes from. Also we've had a tremendous amount of burden given to us on paving graveled  
46 roads. Well I would challenge anyone to do a traffic count on the blacktop roads in this valley at every  
47 construction site there is and the dirt track out and I would suggest to you that the air I'm breathing is stirred  
48 up zillions of times a day on every construction site that is next to a piece of blacktop road. These things just  
49 don't hold up under scrutiny. But we're constantly being given the other side of this issue and most of us  
50 have given up. And I'm probably going to give up pretty soon myself because I can't stand the health  
51 problem much longer.

1 Also, when the executive director left, I went and talked to her about our situation which I mentioned to you  
2 earlier, that I called at least 10 times on and that was the construction work on the Flamingo Wash from  
3 Mohave and (inaudible) to Boulder Highway. Now that's not a very wide tributary in there. It's I don't  
4 know maybe it's 75 or 80 yards wide, something like that. Every day they were there they were in violation.  
5 I was told I probably don't understand interpretation of the regulations. I've got to tell you, some of my  
6 specs. were that thick, ya know? And all of our specs. were legal documents and we had to learn it. And  
7 what I did is I kept track of what happened actually every night because I lived close to that Wash and every  
8 24 hours when they were there that's what was happening. So I know they were in violation. Also, I got  
9 visuals of every time I drove through Miracle Mile where all those seniors got sort of washed out a few years  
10 back. There was nothing but track out in there constantly. Day in and day out. So the administrator has the  
11 gall to tell me I just don't understand what the regulations are. Maybe I don't, but I can see physically  
12 what's happening to people and there is no valid effort to stop the track out on these construction sites. And  
13 I have to tell you, I called more than once on the most important street in town, Las Vegas Boulevard and  
14 Harmon to Las Vegas Boulevard for a year and a half looked like a dirt road. You couldn't get any kind of  
15 enforcement. This dirt gets stirred, it gets up in the air and we're breathing it all the time. So, in my own  
16 area I just had three projects alone that I called on and they did no enforcement. Well, my sense is even with  
17 more help the amount of enforcement isn't nearly as intensive as I saw it several years ago.  
18

19 So I ask you again, don't abandon us here in southern Nevada because you are from the State and I tell you if  
20 this population, which is what 2/3 of the State becomes sicker and sicker guess who is going to be the loser  
21 in the end? It's going to be the State of Nevada because it's going to go on Medicaid or whatever kind of  
22 programs we have. People won't be able to work or something like that. And I have just one other thought  
23 before leaving. People like myself moved to Las Vegas for one reason, we love this town. I used to come  
24 here for years when my people did a good job as architects or engineers and we'd pick a night flight here and  
25 spend the night and catch the red eye and get back to work by 9:00 in the morning. It was a treat. I lived  
26 here for two years before I bought a house with my wife. My sister-in-law and brother-in-law lived here.  
27 The reason we moved and thousands upon thousands like us moved here is changing every day to the point  
28 where what we came here for no longer exists and we see no drive to change things that have gotten out of  
29 control and when I'm talking about in this construction industry is plain professionalism good housekeeping.  
30 You should never be caught dead as an owner of a business doing what's going on here, let alone expecting a  
31 bunch of bureaucrats to try and tell you, "Hey wait a while, you're violating this regulation." Well you and I  
32 all know, if you've ever dealt with regulations in the end they are politically compromised, minimum. When  
33 I was in the business working for our clients.  
34

35 Vice Chairman Coyner stated that's your opinion, not mine. I don't share that.

36  
37 Mr. Mahal stated I understand that.

38  
39 Vice Chairman Coyner asked is that a direct attack upon the regulations that this body promulgates?

40  
41 Mr. Mahal answered no. This is regulations. . .

42  
43 Vice Chairman Coyner stated then it's your opinion.  
44

45 Mr. Mahal stated this is my opinion of regulations as a whole having been through them and I served as vice  
46 chairman of a Planning Commission in Bloomington as a volunteer for six years and I dealt with codes all  
47 over the country and what I was going to tell you in our business most of the time we exceeded the  
48 requirements of the regulations because of the clients we had the (inaudible) standards we had, it was better  
49 for them to build more quality rather than cut on the edge. It's not your fault or anybody's fault. That's the  
50 process. When everybody gets involved, some places are compromised. There's no ideal when we get done,  
51 okay? And there's nothing against the process, I'm just saying that's what we deal with every day. I just  
52 have to say, people like myself and there probably are 300,000, 400,000, 500,000 of us that live in this valley  
53 don't have to live here if we don't want to. And my credit card, you know I hate to think about how many

1 hundreds of thousands of dollars have been charged on my credit card since I've been here. And I've tried  
2 ever since I've been here to work with people on both the water and air quality and traffic things just because  
3 these are common needs that everybody need. And all I'm saying is if people came in droves, those people  
4 came here because they liked it and it has changed so much that this environment is not something they feel  
5 they can put up with anymore by in large they have the opportunity that they will go and they will find some  
6 place else. And I would hate to see that happen. But anyway, I ask you not to abandon oversight of that air  
7 quality division down here in southern Nevada because it impacts all of Nevada and I thank you very much  
8 for your time.

9  
10 Vice Chairman Coyner called for further comments.

11  
12 Commissioner Doppe stated just within the last six months The Review Journal published a poll that in  
13 excess of 82 or 84 percent of the people who are in southern Nevada are very satisfied with their quality of  
14 life in southern Nevada and that's not to say that nearly 100 percent of the people don't wish it were better.  
15 Some with more passion than others, but that's why we're here.

16  
17 Vice Chairman Coyner stated construction permits are on track for another record this year after last year, so  
18 there apparently seems to be more people that want to move here than want to leave.

19  
20 Vice Chairman Coyner adjourned the hearing at 3:35 p.m.

Agenda .....	1, 19, 24, 31, 49, 50, 51
All-Lite Aggregate .....	49
Beaver Dam Wash .....	31, 32
Biaggi.....	19, 24, 51, 52, 53, 54
Caesars Tahoe .....	50
Carson River .....	31, 32, 38, 39
Chiatovich Creek .....	31
Clark County.....	1, 15, 16, 17, 24, 25, 26, 27, 28, 30, 44, 51, 53
Class I....	1, 2, 3, 4, 7, 8, 10, 11, 12, 13, 17, 18, 19
Clean Water Act.....	31, 51
Close .....	1
Colorado River.....	31, 35, 52
Comba .....	35, 37, 38, 42, 43, 44
Cowperthwaite .....	1, 4, 20, 21, 22, 23, 24
Coyner...	1, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 21, 22, 23, 24, 29, 30, 31, 35, 42, 44, 45, 48, 49, 50, 51, 54, 55, 56
Crawforth ....	1, 8, 9, 19, 23, 32, 33, 34, 40, 41, 47, 48, 49, 50, 51
Cripps.....	6, 8, 13, 17, 52
Dahl.....	1
Division.....	18, 19, 35, 40, 41, 48, 51, 52, 53
Doppe.....	1, 21, 22, 29, 33, 34, 42, 45, 46, 49, 51, 53, 54, 56
Dreesbach.....	11
E. Coli .....	31, 36, 38, 45, 47, 54
Elges..	2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19
EPA.....	3, 5, 6, 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 41, 42, 47, 48, 53
Exhibit.....	4, 11, 19, 32, 36, 38, 39
Fees .....	1
Gray.....	1, 21, 22, 23
Great Basin Mine Watch.....	12, 22
Henderson	1, 10, 34, 39, 40, 44, 45, 47, 49, 51
Humboldt River .....	31, 36, 40
Indian Creek.....	31
Iverson.....	1
Johnson ...	1, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 17, 18, 19, 22, 24, 29, 30, 41, 42, 43, 45, 46, 48, 49, 51, 52
Las Vegas Wash.....	31, 37, 40, 44, 54
LCB.....	1, 2, 3, 4, 5, 6, 17, 31
Leidy Creek.....	31
Mahal.....	13, 15, 16, 44, 54, 55
Maize .....	51
Meadow Valley Wash .....	31
Mohave.....	52, 55
Muddy River.....	31, 38, 39
Myers.....	12, 22
NAC 445A.119 .....	31
NAC 445B.001 .....	1, 2
NAC 445B.22097 .....	1
NAC 445B.221 .....	1
NAC 445B.291 .....	1
NAC 445B.327 .....	1
NAC 445B.875 .....	19
NAC 445B.892 .....	20, 21
NAC 445B.895 .....	20, 21
NDEP.....	24, 36
Nevada Mining Association .....	11, 12
NRS .....	20
Open Meeting Law.....	1, 23
Ozone.....	1, 28
Pahl .	31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48
Permit.....	1, 2
Petition 2002-09 .....	1
Petition 2002-10.....	31, 45
Petition 2003-01 .....	19
pH .....	31, 32, 33, 34, 35, 42, 43, 45, 47
PSD.....	3, 7, 10, 52, 53
Reavis ..	1, 5, 19, 33, 35, 37, 38, 39, 41, 45, 46, 47, 48, 49, 50
Ricci...	1, 5, 6, 7, 16, 21, 23, 24, 38, 39, 47, 48, 49, 50, 51, 52, 53
RMHQ .....	36, 45
Robinson .....	1, 24, 29, 30, 31
Rules of Practice .....	19, 20, 22
Snake Creek .....	31, 32, 33
Snake River Basin.....	31, 40
TDS.....	32
Title V .....	2, 10, 11, 12, 13, 18, 25
TMDL.....	31, 40, 41, 44
Truckee River.....	31, 40
Villaflor.....	1
Virgin River .....	31, 32, 39
Walker River.....	31
Yamada .....	49, 50, 51