

Summary Minutes of the  
**STATE ENVIRONMENTAL COMMISSION (SEC)**

Meeting of MARCH 18, 2008

Nevada Department of Wildlife, Conference Room A,  
1100 Valley Road, Reno, Nevada

**Members Present:**

Lewis Dodgion, Chairman  
Alan Coyner, Vice Chairman  
Pete Anderson (present from item 9)  
(Eugene) Jim Gans  
Harry Shull  
Ira Rackley  
M. Frances Barron  
Stephanne Zimmerman  
Tracy Taylor

**Members Absent:**

Kenneth Mayer  
Dir. Of Agriculture (Vacant)

**SEC Staff Present:**

Rose Marie Reynolds, Dep. A.G.  
John Walker, Executive Secretary  
Robert Pearson, Recording Sec.

**BEGIN SUMMARY MINUTES**

Chairman Dodgion called the meeting to order at 9:00 am and noted that the meeting had been properly noticed and that a quorum was present.

He then moved down the agenda to:

**1) Approval of minutes from the December 04, 2007 SEC hearing**

Chairman Dodgion noted that the minutes did not reflect the presence of Commissioner Gans at the December meeting and asked that be corrected. Commissioner Rackley said that on page 3 in the motion at the top, there was no mention of a second. Mr. Walker said that staff would review the recording and insert the second. Commissioner Barron said that on page 1 her last name needed to be corrected to "Barron."

**Motion:** Commissioner Shull moved that the minutes of December 4, 2007 be approved with corrections as noted, was seconded by Commissioner Rackley, and the vote was unanimous in favor.

The Chairman now moved down the agenda to:

**Air Pollution Control / Air Quality Planning**

**2) Regulation R142-07: Minor Violation Fine Increase; Revising the Definition of a Class III Source; and Permitting Corrections/Clarifications:**

Matthew DeBurle, the Permitting Supervisor of the Bureau of Air Pollution Control (BAPC), Nevada Division of Environmental Protection (NDEP) presented the regulation to the Commission.

**(Begin prepared remarks of Mr. DeBurle)**

Mr. Chairman, members of the Commission, for the record my name is Matthew DeBurle. I'm the Permitting Supervisor of the Bureau of Air Pollution Control. I'm here today to provide you with a brief overview of the proposed amendments contained in Petition R142-07. The three issues presented for your consideration are:

**Section 3 of the Petition on pages 2 and 3:** A recent New Source Performance Standard has been issued by EPA for compression ignition (diesel) engines. This NSPS is applicable to all engine sizes. This has caused newer engines that have historically been considered as insignificant activities to be required to obtain an air quality operating permit. This NSPS applies to engines manufactured from 2006 on. In order to provide an option to small operators, who in the past were not required to obtain a permit, the NDEP is proposing an amendment to the definition of a Class III source. The Petition in front of you today provides an operator of one of those NSPS engines to apply for a Class III permit, which is our most cost effective permit.

**Section 6 of the Petition on pages 6 - 8:** As some of you may recall, the NDEP lacked the statutory authority to increase the minor fines in the NAC. Specifically, the NDEP previously petitioned the commission to increase the minor fines some time ago, and the Commission approved the Petition; however, upon final LCB review, it was determined that NRS 445B.640 capped the minor violation fines at \$500 and rejected the regulation change. In the 2007 Legislative Session, the NRS was amended to increase the maximum allowable fine for a minor violation to \$2000. Consequently, NDEP is proposing to make the second and third offenses for fugitive dust violations minor violations again, with an increase in fines commensurate with the penalties NDEP imposed while they were considered major offenses. Additionally, the Third Offense for other violations is proposed to be increased accordingly.

Finally, the NDEP submitted an Applicable State Implementation Plan (ASIP) package to EPA in February 2005 to bring the SIP up to date with current state regulations. An update submittal was sent to EPA in January 2006. Today I am presenting several regulatory changes to correct, clarify and update the NAC for consistency and in direct response to EPA comments on the SIP package.

**Section 1** adds the definition of "Commence"; **Section 2** is updated to include the definition of "Commence" - other sections of the petition are similarly updated;  
**Section 4 on page 3** updates the definition of "Federally Enforceable";

**Section 5 on page 4** is updated to include the definition of “Commence”;  
**Section 7 on page 10** updates the insignificant activity regulations to allow as insignificant an emergency generator at all stationary sources, not just at Class II sources;

**Section 8 on page 13** updates the NAC internal references and adds language for determining Good Engineering Practice stack height;

**Section 9 on page 18** is updated to reference the ASTM standards globally instead of referencing only specific portions of the standards;

**Section 10 on page 21 - 22 and Section 11 on pages 27 - 28** updates the public notice regulations for a Class I source to specify sending a public notice to local Nevada air quality agencies; and the requirement to provide public notice if a stationary source will have the potential to emit more than 5 tons per year of lead.

**Section 12 on page 32** updates the Director’s determination to issue a Class I operating permit with the requirement to include a copy to the Administrator of any public notice sent to a local Nevada air quality agency;

**Section 13 on page 35** updates the public notice regulations for a Class II source to provide public notice if a stationary source will have the potential emit more than 5 tons per year of lead; and

**Section 14 on page 37 - 39** revises the Class II general permit regulations to codify NDEP’s current public participation practices for issuance of the general permit. This was also done in response to EPA comments on the ASIP.

As with all of our proposed regulation changes, a workshop was held to review the proposed amendments. We held a workshop in Carson City on November 8<sup>th</sup>, with four people in attendance. No adverse comments were received. An informational meeting was also held in Carson City on October 16<sup>th</sup> with 12 attendees. No adverse comments were received.

With that, I recommend that the Commission adopt Petition R142-07. I’d be happy to answer any questions you may have.

**(End of prepared remarks)**

Commissioner Barron asked about the facilities emitting “five or more” tons of lead, and whether the NDEP received reports on this. Mr. DeBurle replied that they do in the application receive a potential to emit list, which contains the information. Commissioner Barron followed up by asking about monitoring of amounts emitted, and Mr. DeBurle noted that if there is a limit in the permit they are required to report annually. The annual reports are available to the public. Chairman Dodgion asked if there was a mailing list for interested parties, and Mr. DeBurle referred to the public notice mailing list, which would receive notices that permits were proposed.

Chairman Dodgion asked for public comment, but there was none.

**Motion:** Commissioner Gans moved that Regulation R142-07 be approved as presented, Commissioner Barron seconded the motion, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

**3) Regulation R171-07: Waivers from Emissions Standards for certain Motor Vehicles:**

Mr. Sig Jaunarajs presented the petition to the Commission for NDEP, and Mr. Lloyd Nelson presented for the Department of Motor Vehicles.

Mr. Jaunarajs said that there was a last-minute addition to the petition; a minor change requested by the Legislative Counsel Bureau to clarify what the regulation required. A copy of the change was handed to the Commissioners.

In response to an invitation from Chairman Dodgion, Mr. Jaunarajs explained that this was a "joint regulation" and the relationship between the agencies.

He noted that aspects relating to air quality and the environment, the size of the area in the program, the model years, emission standards, etc. are under the NDEP. The DMV oversees the licensing of the testing stations, testing and licensing of inspectors, etc.

In response to a further question from the Chairman it was clarified that the regulation must be approved by the SEC only, under legislation approved in the most recent legislative session, and if approved would move on to the Legislative Commission. This is not technically a joint regulation, but an SEC regulation.

Mr. Jaunarajs stated that the regulation had been developed cooperatively between the agencies and that joint workshops had been held. He said that Mr. Nelson would give additional testimony on the regulation.

Mr. Nelson now gave the following presentation:

**(Begin prepared remarks of Mr. Nelson)**

Good morning Mr. Chairman and members of the Environmental Commission. My name is Lloyd Nelson, and I am a DMV Services Manager with the Department of Motor Vehicles, Compliance Enforcement Division.

There are currently two issues which address the need to amend NAC 445B.590, allowing DMV staff the ability to grant waivers on OBDII vehicles:

- 1) The increased number of vehicles in Nevada's fleet that are equipped with certified on-board diagnostic systems (OBDII). and;
- 2) To maintain consistency with subsection three of NRS 445B.825, which addresses hardship on the motoring public.

For about the last five years 1996 and newer light duty vehicles (under 8,500 pounds manufacturer gross vehicle weight) equipped with certified on-board diagnostic systems, or OBDII, have not been tested for emission compliance using the traditional exhaust gas measurement test, commonly known as two-speed idle. OBDII vehicles are emission tested by connecting analysis equipment to a vehicle's on board computer and downloading the emission status information from the vehicle's computer to the analysis equipment.

The amount of vehicles equipped with certified on-board diagnostics systems has greatly increased over recent years. 963,778 emission tests, or seventy five percent of all emission tests performed on light duty vehicles during calendar year 2007 were on 1996 and newer light duty vehicles with certified on-board diagnostic systems.

Motorist emission waiver requests received at the DMV Emission Labs have increased for 1996 and newer light duty vehicles equipped with certified on-board diagnostic systems (OBDII).

During calendar year 2007 there were:

43 valid requests for self repair type waivers, 5 of these vehicles (12%) were OBDII.

257 valid requests for shop repair type waivers, 70 of these vehicles (27%) were OBDII.

If language to subsection 1b of NAC 445B.590 is amended to allow waivers on OBDII vehicles, certain criteria must be met in order for DMV staff to grant a waiver. The requirements for granting an emission waiver on an OBDII vehicle are as follows:

- 1) If the vehicle failed the initial emission test for a Malfunction Illumination Lamp that has been set to be lit by the vehicle's computer, the following steps must be taken before the Department staff could grant an emissions waiver, as proposed in subsection five of Nevada Administrative Code 445B.590:
  - A) Fail the initial test for having the malfunction illumination lamp continuously commanded on

- B) Receive repairs that are related to a failure shown on the initial emission test which set the Malfunction Illumination Lamp.
- C) Repair costs must meet the minimum monetary values described within NAC 445B.590. For Clark County the monetary minimum is \$450. All work must be performed at an Authorized Test and Repair Emission Station. For Washoe County the monetary minimum is \$200. If the work is performed at a repair facility that facility must be an Authorized Test and Repair Emission Station, parts and labor costs are allowed towards the monetary waiver minimum. Self Repairs are allowed in Washoe County, parts costs only are allowed towards the monetary waiver minimum.
- D) The vehicle must again fail its re-inspection emission test for only a lit Malfunction Illumination Lamp due to the vehicle's computer "commanding" the lamp to be illuminated.
- E) The motorist must bring their vehicle and all waiver related documentation to one of the Department's Emission Control Test Labs for an inspection.

An emission waiver allows registration of a motor vehicle for one year, or registration cycle and does limit the financial impact on the motoring public who need to have their vehicle repaired in an attempt to meet emission requirements in Nevada. Vehicles that receive an emission waiver for one registration cycle are again subject to these requirements should they fail a future emission test.

In closing, if there are any questions regarding emission waivers, I will do my best to answer them. Thank you for your time listening to my presentation.

**(End of prepared remarks)**

Chairman Dodgion enquired about the difference in monetary amount between Washoe and Clark Counties to obtain the waiver—Mr. Nelson replied that Clark Co. had been designated as a "low enhanced" emissions program, whereas Washoe Co. is a "basic" program, so Clark is higher.

Commissioner Gans asked what percentage of cases end up getting a waiver? Mr. Nelson said it was very low; out of approximately 20,000 initial failures well under one percent has to get a waiver. So it is agreed that the program is accomplishing its purpose.

Commissioner Coyner asked about the some numbers, was the 20,000 figure on vehicles with OBD? Mr. Nelson said that included all vehicles. Commissioner Coyner also asked about the correlation between the OBD illumination and

actual tail pipe tests. Mr. Nelson noted that there is a strong possibility that the light comes on before any actual exceedence of standards.

Commissioner Barron asked about the application of the program to other counties. Mr. Nelson and Mr. Jaunarajs noted that the program only applies to Washoe and Clark Counties as only these counties had not attained the criteria (specifically carbon monoxide) and thus were the only counties with annual testing. Commissioner Barron asked whether that meant that a vehicle registered in, say, Nye County might drive into Clark County daily but not be tested, and Mr. Jaunarajs said that was correct.

Chairman Dodgion asked about the new ozone standards; Mr. Jaunarajs noted that Clark County had an issue with ozone and if in "non-attainment" would probably look to this program to help come into attainment.

Leo Drozdoff, Administrator of the NDEP, came forward to note that the ozone standard was very new and there were a number of issues that would need to be worked out, including background levels from Southern California in Clark and possibly other counties; it would be years before these issues were unraveled.

Commissioner Gans asked how Nevada compared to other states in regard to these types of regulations and their effectiveness. Mr. Nelson noted that the test procedures were standardized nationwide, but that while most states had a monetary maximum and waiver like the one proposed here, a few states did not. Commissioner Gans wondered why some states didn't have a waiver and Nevada did; Mr. Nelson stated that EPA did not recommend waivers but they were allowed. Commissioner Gans asked if Mr. Jaunarajs thought waivers should be allowed, and Mr. Jaunarajs said yes, he did, because there are cars that fail the "light" test and have been repaired and without the waivers they can't register their vehicle.

Commissioner Barron asked who conducted monitoring of ozone in the state, and how the reports could be obtained. Mr. Jaunarajs said that Clark and Washoe Counties monitored their ozone, and there were three other monitoring stations throughout the rest of the state. The Clark County data are available through the Clark Co. Dept. of Air Quality and Environmental Management, and are available on their website in real time. Washoe Co. is similar. Commissioner Barron wondered if anybody put all the data together for the state for comparison purposes, and Mr. Jaunarajs said that NDEP had put such a report together periodically, but not within the last few years, and they intended to do a new one. He thought Commissioner Barron made an excellent point that the data would be useful to have in one place.

When there were no further questions from the Commission, Chairman Dodgion asked for public comment; there was none.

**Motion:** Commissioner Barron moved to approve R171-07 as amended on March 17, 2008. Commissioner Shull seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

### Safe Drinking Water

#### 4) Regulation R014-08: Adoption of federal regulations by reference - US Safe Drinking Water Act:

Jennifer Carr, Chief of the Bureau of Safe Drinking Water at NDEP, presented the regulation to the Commission.

(Begin prepared remarks of Ms. Carr)

Good Morning, Chairman, Members of the Commission.

For the Record, I am Jennifer Carr, Chief of the NDEP's Bureau of Safe Drinking Water.

With this petition, the Bureau of Safe Drinking Water is proposing to amend several regulations in order to continue to obtain program approvals from the US EPA. The Safe Drinking Water Program regulates public drinking water systems using a combination of State regulations and Federal regulations adopted by reference. In order to obtain primary enforcement responsibility (or "Primacy") for federal drinking water programs, the NDEP submits "Primacy package" applications for EPA approval. On September 6, 2007, the NDEP submitted two such primacy packages - one for the Arsenic Rule and one for the Variances and Exemptions rules.

During EPA Region 9's review of these packages, as well as some older ones still in the review process, they identified several items of concern in the NAC's that they believe need amendment prior to primacy approval. The NDEP views these amendments, generally, as one of three things:

- (1) efforts to resolve problems in several regulations with "prospective adoption by reference";
- (2) a necessary update to the adopted version of the Code of Federal Regulations; and
- (3) "cleanup" of certain language in existing provisions.

Most of these amendments are considered necessary by the US EPA to continue to receive Primacy approval.

A workshop to solicit public comment on the proposed regulations was held on February 5th, 2008, in Carson City with a video link to Las Vegas. The proposed regulations were posted on the NDEP website and available for review and comment. A total of eleven people attended the workshop at both locations. I also had the opportunity to cover them again at the Annual Nevada Rural Water Association Conference in Stateline, Nevada last week as part of my 2008 State Regulatory Update presentation to an audience of over 60 individuals. No adverse comments or concerns with these amendments have been received from any of the outreach efforts.

**To quickly review this petition:**

The proposed revisions in Section 1 add dates (such as the date of the last amendment to the Federal Safe Drinking Water Act) or dated references to the Code of Federal Regulations, in order to resolve some of the “prospective adoption by reference” issues. In short, where there was not a reference to a specific dated adoption, these NAC’s had the potential to “update themselves” when the referenced federal Law or Regulation is updated.

The full Repeal of NAC 445A.4915 in Section 4 (and elimination of associated referenced to the repealed regulation in Sections 2 and 3) – also resolve a “prospective adoption by reference” issue. This regulation was originally adopted by the Board of Health and was part of the regulations that we brought before you, and into our program, in 2005. Upon US EPA prompting for primacy reasons, we further examined this regulation and agreed that it has the potential to cause confusion among the regulated community. NAC 445A.4915 requires that any publication adopted by reference (potentially including federal regulations) be reviewed by the SEC in order to determine it’s suitability for this State. If a revision is not determined to be suitable, a sort of negative declaration hearing would have to be scheduled within 6 short months of the revision in order to give notice of the SEC decision, otherwise the federal revisions to a referenced and adopted publication would become permanent.

I believe that this regulation is not in the best interest of the regulated community and is not good public policy. Any adoptions of regulations, programs, or even federal guidance documents, should be intentional and fully vetted through our typical Administrative Regulation processes and the SEC.

**Remaining portions of this petition:**

As you are aware, the Safe Drinking Water Program adopts provisions of the National Primary Drinking Water Regulations, in the CFR, by reference. Since changes are continually made at the federal level it is necessary to periodically update our reference to federal regulations in the NAC so as to remain consistent with these federal provisions. This petition incorporates the federal rules published from July 1, 2003 to July 1, 2005. For reasons I’ll state in a moment, I intentionally stopped short of the July 1, 2006 codification.

For the purposes of Primacy approval for the Arsenic Rule, the EPA requires that we update, at a minimum, to the July 1, 2004 codification in order to catch some language in that rule that did not become effective until January 22, 2004 and was not published federally until July 1, 2004.

Other updates that occurred between 2003 and 2005 include: additional laboratory analytical methods that can be used by Public Water Systems for compliance with coliform and uranium standards; ... they include ... clarification of the minimum acceptable laboratory detection limit for uranium compliance analyses; ... they include ... a federal "cleanup" adoption for errors and omissions to several of the Regulations; and the addition of language that they had inadvertently dropped from a prior codification of the Lead and Copper Rule.

The NDEP believes that all of these additions to the CFR are beneficial to the Safe Drinking Water Program and the regulated community.

As I mentioned, I intentionally stopped at the 2005 codification. In 2006 and 2007 three significant program additions were made at the federal level. The Bureau of Safe Drinking Water is working on regulations for these programs and will be bringing them to you later in 2008. At this time, the criticality of primacy approval for applications that we have already submitted caused me to propose the current amendments in this petition without delay.

That concludes my testimony and I would be happy to answer any questions you may have. Thank you.

**(End of prepared remarks)**

Commissioner Gans asked about the theoretical consequences of not approving these regulations, whether in that case USEPA takes primacy in enforcement, and Ms. Carr replied that essentially that was correct. Chairman Dodgion also asked about primacy under the Safe Drinking Water Act, whether it had to be renewed periodically, and Ms. Carr said that when they come out with a new rule then the state has to apply for primary enforcement.

Commissioner Barron asked about the time frame for adopting the 2006 and 2007 program additions mentioned previously, and the required time lines, and Ms. Carr said that generally the deadline was two years, and that the goal is to have the draft regulation on the fall SEC calendar.

Chairman Dodgion now asked for public comment, and there was none.

Commissioner Coyner had an additional question; why was 445A.4915 put into regulation in the first place? Ms. Carr said that as that regulation had been

adopted by the Board of Health she wasn't really sure. Chairman Dodgion expressed his surprise that the Legislative Council had allowed such a regulation.

**Motion:** Commissioner Gans now moved for approval of Regulation R014-08, it was seconded by Commissioner Rackley, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

### **Corrective Actions**

#### **5) Regulation R004-08: Delivery Prohibition - Underground Storage Tanks:**

Scott Smale of the Bureau of Corrective Actions presented the regulation.

He said that this regulation and item 6 on today's agenda were separate regulations but that he would present some common background at this point.

In 2005 the federal government passed the Energy Policy Act, including the Underground Storage Tank Compliance Act. The NDEP is the designated authority to oversee this program and receives federal funds to implement it. The 2005 Act laid out elements that states must implement to continue to receive funds to oversee the programs. Some of these elements are included in today's regulations. Others are being worked on.

USEPA is satisfied that with these two regulations we are making "significant progress."

Mr. Smale now turned specifically to R004-08, saying that delivery prohibition is a final enforcement mechanism for tanks not in compliance. There are a number of steps NDEP can take to bring a tank into compliance, and those are preferred, but this is another tool to bring a tank into compliance.

Section 2 gives the definition of "red tag," the method being used to implement delivery prohibition. The other option was "green tag" where all eligible tanks would be tagged.

Section 3 lays out the requirements for delivery prohibition. Subsection 2 provides for waivers, for example to supply an emergency generator. Also, rural or remote area tanks that are the only fuel source can obtain a waiver. Waivers are for a limited time; tanks still must come into compliance.

Section 4 marks conditions of ineligibility—if the tank does not have the proper equipment for spill/overfill prevention or leak detection, or if it does not have required corrosion protection. If the tank has those elements but they are not

functioning or operating properly, the facility has 30 days or other reasonable time determined by the agency to bring them in to compliance.

Section 5 governs the procedures NDEP must undertake to mark a tank ineligible, including notification requirements, the criteria used to make the determination, and what action the owner/operator must take to have the tank reclassified as "eligible."

Section 6 governs that reclassification process. The owner/operator can provide documentation that the situation has been rectified and NDEP has seven days to make a determination—if an inspection is required, 14 days.

Other sections reference other places in regulation where underground storage tanks are mentioned.

A workshop on these regulations was held and approximately 30 people attended. There was mainly technical feedback that will be worked out in the technical guidelines.

Mr. Smale introduced Peter Krueger of the Nevada Petroleum Marketers and Convenience Store Association, the industry group that represents the regulated community under this regulation, and said that he would speak in support.

Chairman Dodgion asked if there were questions from the Commission. Commissioner Rackley asked Mr. Smale how the tanks are identified for red tags. Mr. Smale said it was usually through inspections.

Mr. Mike Cabble, a UST Inspector for the Bureau of Corrective Actions, came forward to speak to the inspection issues. He said that they (the Bureau) were required to inspect tanks every three years, but were currently on a schedule of every 18 months and would like to get it down to yearly. They visually inspect the tanks and examine monitoring data. There are about 4,000 tanks in the state.

In response to further questions from Commissioner Rackley, Mr. Cabble said they don't expect that they would have to use the red tag very often, if at all. Generally the owner/operator cooperates to ensure compliance.

Chairman Dodgion noted that the tanks are required to have monitoring systems and that there is required notification if there is a failure shown, and that is what the data review is for, and Mr. Cabble agreed.

Mr. Gans asked if all the tanks were for petroleum products and Mr. Cabble said almost all, there were a very few with hazardous substances. Mr. Gans asked what those substances were and Mr. Cabble named fuel additives.

Chairman Dodgion noted the letter of support supplied by Peter Kruger and asked if Mr. Krueger had anything to add. Mr. Krueger came forward and spoke in support of the regulation, saying that NDEP staff had made the process workable and the regulations should enhance compliance.

Chairman Dodgion asked if there was any public comment. There was none.

**Motion:** Commissioner Rackley moved that the Commission adopt resolution R004-08 as presented, the regulation was seconded by Commissioner Gans, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

**6) Regulation R005-08: Secondary Containment for Underground Storage Tanks:**

Mr. Smale again presented the regulation for NDEP.

He noted that the regulation governed secondary containment for registered underground storage tanks, again as part of the 2005 Energy Policy Act, which identified secondary containment as a required element for states to undertake to continue to receive funding for their UST programs.

Section 3 gives the definition of secondary containment, a system with an inner and outer barrier with a means of monitoring the interstitial space between them. Secondary containment consists of both the secondary containment structure and the means of monitoring that space. Along with the secondary containment, the Energy Policy Act also required under-dispenser containers for motor vehicle fuel dispensers, another component of this regulation.

Section 5 defines the required elements of secondary containment. Amongst others, it must be checked for evidence of a release every 30 days and these records must be kept for at least one year. When the inspectors go to the facility these are among the records they check. The owners are required to notify the Division of the installation and replacement of these systems, in order to state the mechanism of secondary containment and also keep records of these actions.

Section 6 places this secondary containment requirement on all new tanks that are installed; the date contained in the regulation currently is April 1, 2008, but NDEP now proposes that the date be changed to July 1, 2008, so that the date would not fall before the Legislative Commission heard the regulations. Mr. Smale reiterated that this requirement applied only to newly installed tanks.

Section 7 requires replaced tanks to also have secondary containment. He noted that the piping is included in the definition of "tanks." He added that due to technical problems secondary containment on piping is required by the federal guidelines to be applied only when 100 percent of a run of pipe is replaced, and also secondary containment does not apply to pipe repairs.

Section 8 governs under-dispenser containment, and here also the effective date needs to be moved to July 1, 2008. He added that the Division wants to change wording in this section from "allow for monitoring and visual inspection" to "monitoring and/or visual inspection" as there may be instances where it is not physically possible to visually inspect and NDEP could approve some other method of monitoring.

Section 9 contains a waiver from secondary containment requirements for facilities that can demonstrate they are not within 1,000 feet of a public drinking water system or potable drinking water well. The tests for this waiver are laid out in this section. The 1,000 feet is to within any part of the tank system, including pipes, etc. They do not anticipate that the waiver will apply to any tanks, but it is a requirement of the federal law.

A workshop on these regulations was held concurrent with the delivery prohibition regulations (above).

Commissioner Gans had a question about the waiver. He wondered why it would make any difference if the tank was farther than 1,000 feet from water sources—the goal was still to stop contamination. Mr. Smale said that when there are any releases there are mechanisms to deal with those, they would not ignore anything because it was not close to groundwater.

Commissioner Barron had a question about the record keeping—the requirements are to retain for 12 months, but our inspectors visit sites about an average of every 18 months. Should we require records be retained longer? Mr. Smale noted that the 12 months was a federal requirement and that Nevada law said that our requirements could not be more stringent than federal UST requirements. So when the inspector goes out they do examine at least 12 months of records. Commissioner Barron also wondered about the piping containment. Mr. Smale said there will probably be further guidelines developed on what is repair versus replacement.

Commissioner Coyner asked what a cost estimate would be to install secondary containment on an existing tank. Mr. Cabble said there were a lot of variables—the cost of a recent "AST" system in rural Nevada was about \$13,000 and secondary containment might be similar. Commissioner Coyner also wondered whether it might be best to install a new tank system instead of just secondary containment, and Mr. Cabble said that would be ideal but owners were operating on thin margins, so they do replace and upgrade as needed. It

was also clarified that if piping does fail the tank does not necessarily need to be replaced as well, but if 100 percent of piping is replaced it must have secondary containment.

Commissioner Gans asked if Mr. Krueger would come forward again and address some of these issues. Mr. Krueger said that there are various tank options and variables, but on a brand-new site the cost would be over \$100,000 for a complete system. Replacing a single tank and piping to a dispenser could be \$50,000 or less.

Commissioner Coyner said that his concern was that the last time the Commission regulated USTs then Denio had no gas. Mr. Krueger said that 1998 was the watershed year, when the state tank inventory all had to come into compliance, with monitoring and other requirements. And at that time there were real problems in rural areas. But he felt that these current regulations with some included time extensions would not cause anyone to be without fuel.

Chairman Dodgion asked if Mr. Krueger had any objection to the proposed date changes from April 1 to July 1, and Mr. Krueger said he had none.

Chairman Dodgion asked if there was any public comment, and there was none.

**Motion:** Commissioner Shull moved approval of Regulation R005-08, with the amendment of the dates in Sections 6 and 8 from April 1, 2008 to July 1, 2008, and the change in Section 8.2 to “monitoring and/or visual inspection” as outlined in the presentation. Commissioner Barron seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

## **Waste Management**

### **7) Regulation R015-08: Adopt by Reference, Hazardous Waste Regulation:**

Mr. Jim Trent of the NDEP Bureau of Waste Management presented the regulation to the Commission. He gave the following prepared remarks:

**(Begin prepared remarks of Mr. Trent)**

With this petition, the Bureau of Waste Management is proposing to update our adoption by reference of federal hazardous waste regulations and correct three obsolete references to NDEP’s old street address in the NAC. A workshop to solicit public comment on the proposed regulations was held on January 15, 2008, in Carson City with a video link to Las Vegas. A total of nine people attended the workshop at both locations. The proposed regulations and notes from the workshop were posted on the NDEP website and available for review

and comment via the internet. As you are aware, Nevada adopts by reference federal hazardous waste regulations. Since changes are continually made at the federal level it is necessary to periodically update our reference to federal regulations in the NAC so as to remain consistent with these federal regulations and able to enforce them in Nevada in lieu of USEPA. This petition incorporates the federal rules published from July 1, 2006, to July 1, 2007.

The proposed revisions in Sections 1 and 2, 4 through 7 and 9 through 16, replacing July 1, 2006, with July 1, 2007, are required to update the adoption of federal hazardous waste regulations by reference.

Section 6 of the petition contains revisions to various word substitutions so that export paperwork is sent to EPA not NDEP.

Sections 3, 8 and 17 correct obsolete references to NDEP's old street address.

Let me briefly describe the proposed federal amendments. There are only two new rules.

**Corrections to Errors in the Code of Federal Regulations.** This rule corrects errors in the hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the Federal Register. This final rule does not create new regulatory requirements.

**Cathode Ray Tubes or CRT Rule** streamlines management requirements for recycling of used cathode ray tubes (CRTs) and glass removed from CRTs. For the record, CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device, usually a television or computer. The amendment excludes these materials from the RCRA definition of solid waste if certain conditions regarding, labeling, storage and shipping are met. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass. This rule does not change requirements for CRTs sent for disposal.

**(End of prepared remarks)**

There were no questions from the Commission.

Chairman Dodgion asked for public comment, and there was none.

**Motion:** Commissioner Zimmerman moved to approve the proposed amendment to the regulations in R015-08 as presented, the motion was seconded by Commissioner Rackley and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to:

### Other SEC Business

#### 8) Advisory Board Certification of Operators of Water Systems (NRS 445A.870)

- Discussion of possible action regarding need for Nevada Certified Drinking Water Operators Advisory Board

Jennifer Carr, Chief of the Bureau of Safe Drinking Water, presented the following remarks regarding the Advisory Board and their recent action at the Advisory Board meeting of March 11, 2008.

(Begin prepared remarks of Ms. Carr)

Good afternoon, Chairman, Members of the Commission.

For the Record, I am Jennifer Carr, Chief of the NDEP's Bureau of Safe Drinking Water.

On the Agenda before you today is the current item related to possible reappointment of the members of the Advisory Board to the SEC on Certification of Operators of Public Water Systems. I am here to provide you with a little history, from the NDEP perspective, and relay information from the recent Advisory Board meeting last week.

The NDEP's Perspective:

The Nevada Water Operator Certification Advisory Board (that I will hereon refer to as simply the Advisory Board) has been in existence for many years, originally as an Advisory Board to the State Board of Health. The SEC re-appointed the members as Advisory to the SEC following the 2005 Legislative Session, during which Senate Bill 395 transferred the Safe Drinking Water regulatory program to the NDEP.

Senate Bill 395 transferred the authority for implementation of NRS 445A.870 to the SEC. This Statute relates to optional appointment of an advisory board in matters relating to the certification of operators of community and non-community water systems. At the March 8, 2006 hearing of the SEC, the existing Advisory Board members were appointed for a two-year term, with those terms expiring now.

Prior to shifting from the Board of Health over to appointments by the SEC, the Advisory Board was instrumental in the development of regulations for the Certification of Operators that the NDEP uses today. Since SEC appointment,

the existence of the Advisory Board has provided a valuable mechanism for NDEP to routinely communicate with the regulated community of water system operators and other associated parties such as the American Water Works Association (who provides operator training and testing). The Advisory Board has historically held formal open meetings on a quarterly basis for the interaction of these parties.

Recently:

During the fall of 2007, the NDEP believed it to be prudent to plan for the expiration of Board Member terms, and have a plan for continuing the existing and valuable information exchange in the event that the members were not re-appointed for an additional term. At the September 14, 2007 Advisory Board Meeting, the NDEP presented a proposal for the Members to consider for possible pro-active conversion of the Advisory Board to an open Forum format. The NDEP has had very positive experiences with other communications Forums such as the Lake Mead Water Quality Forum and the Clark County Air Quality Forum. The NDEP proposed that an Operator's Forum would continue to provide a regular mechanism for communication among the regulated community of certified operators, the American Water Works Association, the NDEP and others.

Following the September meeting, I was assigned to work with Advisory Board Member Mr. Chet Auckly to draft a document that: reviewed some historical background, outlined a Mission for the future Forum, and laid out possible Operational Structure points that the Forum could then finalize and operate under going forward. The document has since become known as "The White Paper".

What is the Current Position of the Advisory Board?

Last Tuesday, March 11<sup>th</sup>, the Advisory Board held their most recent Quarterly meeting. Two items related to the future of the Board were agendaized: The First - to discuss the "White Paper" proposal for possible conversion of the Board to a new Nevada Certified Drinking Water Operators Forum; and The Second - to vote on what the Advisory Board's official recommendation would be to the SEC today.

*At the appropriate point on the Agenda, Board Member Mr. Chet Auckly moved to approve a conversion of the Advisory Board to a Forum as detailed in the White Paper previously discussed; Board Member Mr. Harvey Johnson seconded, and the vote was unanimous in favor [of the Forum concept].*

If the SEC does not re-appoint the Advisory Board members today, I am personally very pleased that we, collectively with the Board, have done this

level of planning to ensure that the Bureau retains a valuable resource and communication tool with the regulated community.

At this time, I would be happy to answer any questions you may have. In addition, Advisory Board Chairman, Mr. Cameron McKay is also here to answer any questions.

**(End of prepared remarks)**

Commissioner Zimmerman wondered if this meant no action was required by the Commission, and Chairman Dodgion said that it could mean that.

Commissioner Gans asked about what the Forum would mean and how it would be governed. Ms. Carr replied that the Bureau would assist in planning, agendas and notification to the regulated community. Since it was noted that there might be a need for the SEC to reappoint the Advisory Board in the future, it was decided to have the structure of the Forum mimic an Advisory Board for ease of transition if needed. She added that the formalities of the Advisory Board (attorneys' present, strict agendas etc.) were limiting the communication that they had with operators.

Chairman Dodgion noted that the Advisory Board did not have the power to adopt regulations but only to advise the SEC. The Forum members could come before the SEC to comment and lobby for or against proposed regulations.

Ms. Carr said that the Forum would be used to try and make regulations acceptable to the regulated community before they came to the SEC.

Commissioner Rackley asked about the Lake Mead Water Quality Forum and wondered whether there would be similarities in format; the answer was yes. He asked if the NDEP would chair this forum as well. Ms. Carr said that she hadn't thought of it in exactly those terms, but agreed with Commissioner Rackley that it had worked very well there and in the Clark County Air Quality Forum. She stated that NDEP had planned to help with agendas, meetings and a website. The charter members of this Forum will be the current Advisory Board.

Commissioner Gans asked about the wastewater side; Ms. Carr noted there is a Board for Wastewater Operator Certification, which is not set up in statute, but performs similar functions (testing, etc.). NDEP does work with this Board. She noted that in rural Nevada many operators work in both areas.

Leo Drozdoff, Administrator of NDEP, came forward to offer some background. The Wastewater Board predates the Advisory Board for Water Operators, having come into existence under what was then called the Nevada Water Pollution Control Association (now the Nevada Water Environment Federation) as a

voluntary certification program. In 1991 the Legislature required the program become mandatory, and the mandatory program built closely on the existing voluntary program. There is a board in an advisory role. NDEP has a contract with NWEA for testing. NDEP monitors and participates in the process.

When there were no additional questions, Chairman Dodgion invited Cameron McKay, Chairman of the Advisory Board, to address the issue.

Mr. McKay said he had no problem and the Board had voted and agreed with the concept. He said that the Board had been the only voice to the SEC and he wanted to make sure that operators still had the input on any changes. He noted that as stated a lot of operators do both water and wastewater, and he added that on the wastewater side there is still no certification for collections. That is something he would like to see looked at.

Chairman Dodgion asked for public comment on the item, and there was none.

He laid out the options for the Commission—to do nothing and the terms of the Advisory Board would expire as outlined in the presentation and the Forum will be implemented. Or the Commission could move to reappoint the Board and come back at the next meeting and appoint members. Another option is to take action to accept the staff recommendation and concur with the formation of the Forum.

**Motion:** Commissioner Gans moved to accept the staff recommendation and concur with the formation of the Forum; the motion was seconded by Commissioner Rackley, and the vote was unanimous in favor.

**Waste Management: \*Non Action Items**

- US Ecology Hazardous Waste Disposal Site
- Western Elite disposal services

Eric Noack, Chief of the NDEP Bureau of Waste Management, presented reports on the above items (as requested at the December 2007 SEC meeting). He noted that Jeff Dennison, long-time Permit Supervisor in Hazardous Waste, has moved to the Bureau of Air Pollution Control and the new Supervisor was Mike Leigh, who was present.

**US Ecology Hazardous Waste Disposal Site**

Mr. Noack followed in general outline a PowerPoint presentation that had been distributed to the commission and made available to the public. (The presentation is available as Appendix 1).

*(Commissioner Anderson arrived shortly after the beginning of this presentation).*

At page 2 of the presentation, Chairman Dodgion asked about the segregated waste, and it was clarified that this had been in "Cell 10" on the location map.

Commissioner Gans asked what segregated waste consisted of, for example? Mr. Noack said it could be anything that could cause trouble if mixed, so it was segregated; an oxidizer or something that would cause ignition.

During the discussion of construction diagrams, Mr. Noack clarified that the new Cells 11 and 12 would be lined, but that Cell 10, built many years ago, had not been.

After completion of the presentation Commissioner Rackley asked about monitoring wells in the gravel and sand layers; Mr. Noack answered that there is monitoring of both the upper aquifer, which is not a primary aquifer, and also the lower aquifer.

Chairman Dodgion asked for confirmation that the low-level radioactive site was closed, which was confirmed, and wondered whether NDEP had any responsibility for that site or whether it was still with the Health Division (the Health Division which was confirmed by Mr. Noack). Mr. Noack said NDEP does have responsibility for the overall site closure, but there will also be post closure inspections by the Health Division.

Commissioner Coyner asked about the materials that come into the site, and Mr. Noack said he would defer to Mr. Marchand of US Ecology for those details. Commissioner Coyner said he had some other question for Mr. Marchand, as well.

Commissioner Barron asked if the Cell 10 was not lined, how were we protecting the environment? Mr. Noack said that there was groundwater sample monitoring and analysis. She also wanted to know in general what materials were in that part of the site. Mr. Noack said things classified as RCRA Hazardous Waste, for example, PCB contaminated equipment, remediation waste and contaminated soil. About half of the waste is from California, 25 percent from Nevada and 25 percent from other states.

Commissioner Barron also wondered when Cell 10 had been closed, and Commissioner Zimmerman said she also had questions along these same lines.

Bob Marchand, General Manager of the US Ecology facility came forward to answer the other questions from the Commission.

He stated that regarding types of wastes, they included the entire range of RCRA and TOSCA regulated wastes were received including PCBs, metal bearing wastes, oxidizers, corrosives and organic contaminated waste which is treated

prior to being put in to the landfill. Other wastes are also treated in an EPA-approved manner prior to being buried.

Commissioner Gans asked about the capacity of the site, if it would have to be enlarged. Mr. Marchand said that there is about 10 year's capacity with the new Trench 12, after which the site will be full.

Commissioner Zimmerman asked about lining, and the answer was that the site opened in 1962 and in the earlier years there was no lining requirement and liquids were allowed, and that now there is monitoring of these areas. Currently all disposal sites are lined and liquids are solidified before burial.

Chairman Dodgion said that he recalled shallow wells to monitor Cell 10 that checked for migrating liquids. Mr. Marchand said those wells have been removed, as they may have been providing migration for vapors to groundwater. There is now also a vapor extraction well to protect the groundwater.

Commissioner Barron asked about monitoring of the low-level radioactive waste site, and the answer was that it is overseen by the State Division of Health. She asked if this is a federal facility and if that was, why waste was accepted from other states, and the answer was that the land is state-owned.

Economically there is not enough waste from Nevada alone to support a stand-alone facility. Revenue to the state from the facility is through tipping fees, and Mr. Noack said that it was on track for fiscal 2008 to be about \$2 million. The revenues go through a fee schedule to various state agencies that have responsibilities in regard to the site, e.g. NDEP, the State fire marshal and Public Service Commission and to a closure/post-closure fund and a perpetual care and maintenance fund. Commissioner Barron asked about the fees compared to other facilities in neighboring states, and Mr. Noack said they were careful to try to keep them similar.

Chairman Dodgion noted that the perpetual care funds are important because the state does own the site and after it is closed the state will have responsibility to care for it in perpetuity.

Chairman Dodgion asked about plans from years past to purchase the surrounding 400 acres. Mr. Marchand said that while it might be a good idea there was nothing but the most preliminary of discussions so far.

Commissioner Coyner thanked Mr. Marchand for coming and said that one reason he asked for the presentation today was that other Commissioners might not be very familiar with the facility. He recalled the presentation to the SEC from about four years ago, including a lot of financial considerations. He asked Mr. Marchand if US Ecology was doing all right with the current fee structure,

and the reply was yes, that thanks to the SEC actions in 2004 the facility is viable and competitive with others in the surrounding states, although there is some transportation cost differential due to location.

Commissioner Rackley wondered as we approach the end of the life of this site, are there plans to develop another? Mr. Noack and Mr. Marchand both said they knew of nothing concrete. Mr. Noack did mention the possibility of purchasing the BLM area around the current site. Commissioner Rackley also asked about the site in southern Utah that had been mentioned, and the answer was that this site accepts only some types of waste, but is rail-served and so is receiving plenty of business. He confirmed that there is no current "commercial" low-level site in Nevada.

Mr. Drozdoff came forward to note that Nevada was a member of a tri-state agreement, with Colorado and New Mexico, to ensure adequate disposal facilities for commercial radiological waste. The material is allowed to go to other sites outside the region under a waiver process. There is a new site now open in Colorado. Commissioner Rackley asked if uranium contaminated waste water with detectable levels of nucleotides had to go through this disposal process, and Mr. Drozdoff said yes, it could go to the Colorado facility or could go outside the low-level waste compact, but the compact had to be notified.

Commissioner Barron asked about the corporate structure of US Ecology, and Mr. Marchand responded that US Ecology Nevada Inc. was a subsidiary of the publically traded American Ecology Corp. based in Boise, ID. American Ecology has other facilities in the western US.

Commissioner Gans said he had some additional questions about the finances of the site. He said he understood there was income of about \$1.3 million to the state annually, had the state had to put in a capital investment? Also, what were the annual operation and maintenance costs of the site? Mr. Marchand replied that all the capital was from US Ecology/American Ecology, they have provided the plans for long-term care and maintenance of the site and the state ensures that fees are adequate to fund that long-term cost. The annual operating cost is "several million dollars."

Commissioner Zimmerman asked about a breakdown of the fee schedule, the lease income and the distribution of revenue to various agencies. Mr. Noack said the lease income was fairly small, most of the revenue was from the tipping fees; he also noted that the two funds for long-term care and maintenance have approximately \$14 million and \$10 million in them. The perpetual care and maintenance fund of \$14 million is still housed within the Health Division, while the post-closure fund is within NDEP. Chairman Dodgion noted that they were somewhat protected from the budget process.

This completed the portion of Mr. Noack's presentation on the US Ecology site, and he moved on to:

### **Western Elite disposal services**

Mr. Noack followed a PowerPoint presentation that had been distributed to the commission and made available to the public. (The presentation is available as Appendix 2).

Chairman Dodgion asked where the facility was in relation to meeting the Consent Decree, and Mr. Noack replied that they were about 80 percent complete with moving the "legacy waste." They have moved the waste on a schedule that allowed them to remain viable as a company by continuing to serve the customers. When the legacy waste move is complete they go back to becoming just like any other landfill. There was a \$1 million trust to ensure that the job got done and now about \$800,000 has been distributed back, with the remaining \$200,000 withheld until completion.

Commissioner Coyner noted that the facility was just over the Lincoln County line and asked if there was any benefit to the county from the landfill; Mr. Noack said he didn't know the details, but they do or can receive Lincoln County waste.

Chairman Dodgion noted the \$250,000 penalty/fine on the facility and wondered if that had been received? Mr. Noack said he thought so but did not have the details—he told the Chairman he would follow up and send him the information.

Chairman Dodgion asked about dairy waste that he understood was to have been received at the site when it first opened. Mr. Noack said that the facility was not currently permitted to receive dairy waste.

Commissioner Zimmerman said that, going back to the US Ecology presentation, she would like to receive more detailed information on the lease and other financial information on the deal between the state and the company. Mr. Noack said he would provide the information to her.

When there were no further questions for Mr. Noack, Chairman Dodgion moved down the agenda to:

### **10) Administrator's Briefing to the Commission**

- Program Update - Unfunded mandates, state priorities verses federal priorities
- Program Updates, Air permitting activities, other

Commissioner Coyner commented that before the Administrator began, he noted that there were no NOAVs on the agenda for this meeting and asked about the reasons. Mr. Walker noted that there were a couple that might have been on the agenda but some of the paperwork had not been completed in time for the meeting notice deadlines.

Mr. Drozdoff began by saying that in referring to the topic of unfunded mandates and state versus federal priorities, there had been active discussions with EPA Region IX about what is going on at the federal level. He said he appreciated their candor, but there are clearly different styles and approaches between the state and Region IX—to sum up, they are more concerned with enforcement, with numbers, while Nevada is, and has been, taking a preventative approach, seeking compliance rather than trying to issue violations. He noted that NDEP enforcement numbers are lower than some other states', however he said the Division does issue violations; he recalled the example of the recent penalty of \$85 million against Nevada Power.

USEPA Region IX, to their credit, has said they've relayed our concerns to EPA headquarters, but have been largely ignored. So now we're attempting to make our concerns known. He said that he would personally be visiting Washington to speak to the members of the Nevada Congressional delegation on these issues.

We had talked about getting support from the SEC on unfunded mandates, but I want to have further discussions on different fronts at this point and not miss the mark, unfunded mandates is part of it but not all, I'd want to come back to the Commission with a report and if the Commission likes what I have to say at that point present some sort of Resolution.

State priorities versus Federal priorities—he felt that the state was doing business in a good way, there is mostly consensus among various interests, and if citing violators was the only priority that could be increased but he thought Nevada needed to tell the story of how we are doing things in a positive way.

When violations are noted, often the result is that the penalty is that remediation work gets done on the ground, improving things locally, but again that's not necessarily what EPA concurs with.

Update on coal-fired power plants: There are three, as the Commission heard previously; all three have gone through public notice with draft permits and have had public hearing; the comments are being worked through. There are still a lot of hurdles that need to be crossed. EPA and federal land managers still have work to do on their side.

Chairman Dodgion asked if these federal actions need to be completed before the state actually issues permits; the answer was yes, they are currently draft permits.

Regarding ozone as brought up earlier in this meeting, the standard is being reduced from .08 ppb to .075 and that likely will mean Clark County will be found in non-attainment and will have work to do. In Southern California the levels are above .1 and this had implications for not only Clark but also the rural counties. NDEP and Clark County comments on the new standards were mainly about this, and possibly the action will be to see if current and new measures in Southern California will bring those areas into attainment. But Clark Co. will still need to work with NDEP on measures, as well.

Commissioner Gans asked if EPA accepted the transport of ozone out of the L.A. Basin? Mr. Drozdoff noted that the EPA approach was separate on setting standards and attainment—he thought EPA absolutely knew transport was a big issue, but it didn't affect the setting of the standard. Chairman Dodgion noted air pollution transport issues in other parts of the country as well. He asked where Clark County stood under the old standard and Mr. Drozdoff characterized it as "right on the edge."

Commissioner Barron asked about how the monitoring worked and how these numbers were obtained; Colleen Cripps, NDEP Deputy Administrator came forward and explained that the standard was based on "a fourth high over an average of three years," they determine what their eight-hour averages are, take the fourth high for a year and then do it for an average over a period of three years. If that number meets the standard then they're in attainment. Commissioner Gans asked if it was a rolling average, and Ms. Cripps said yes. Commissioner Barron asked where to obtain these statistics and Ms. Cripps noted that they were available on the (Clark County) website. They were not in attainment with the new standard. In response to Commissioner Gans she stated that Washoe County would meet the standard. But much of the rest of the state is also on the edge. Commissioner Gans noted that for the rural counties there could be no possible explanation other than transport (or it was noted, background). Ms. Cripps added that there is a commission in the eastern states looking at transport issues.

Mr. Drozdoff continued with some remarks on climate change issues—the state is active in various climate groups, and working with the Climate Registry to develop an inventory—something that will be standardized and valuable for the future. If this can't be fully worked out Nevada will develop its own stand alone version. He expected to have something to the Commission on those fronts by the end of the year. In response to Commissioner Gans he said his opinion was that USEPA was not providing substantive leadership on the issue, and various regions and coalitions were doing it on their own. It was a concern what that would mean if and when the federal government acted.

Chairman Dodgion asked about the US Supreme Court decision on EPA's right to regulate tailpipe emissions of greenhouse gases. EPA has not acted on that decision yet. EPA did turn down California's request for its own standards, added Mr. Drozdoff. To sum up, DCNR Director Allen Biaggi is a member of the Governor's Climate Change Advisory Committee, Mr. Drozdoff and Ms. Cripps are regular attendees, and recommendations are expected by May. So there is activity on all of these fronts. One difference with many states is that Nevada has low in-state generation of GHG, and the discussion of federal action focuses quite a bit on cap-and-trade, and because of the state's circumstances our "cap" might be artificially low.

Commissioner Gans asked about the mix of fuels in power generation, and Mr. Drozdoff noted that one concern, especially in Southern Nevada, was that there was a great reliance on natural gas—there is a difference of opinion on whether, and what type of, plants are needed for the future. The Public Utilities Commission is the main decision maker in this area, but NDEP is doing its job in the permitting process. We will do everything we can to minimize greenhouse gases.

Commissioner Barron asked about the current state of the Hawthorne mercury storage facility. Mr. Drozdoff noted that there has been no mercury shipped, that the Defense Logistics Agency (DLA) would like to start as soon as possible, but that the state is working regularly with DLA to address issues. To DLA's credit, they have said (until now) they will get all questions answered before they ship the material.

Commissioner Anderson asked about legislation for next year's session. Mr. Drozdoff said that the agency currently had a modest legislative agenda, they are still working with Director Biaggi—they are talking about updates to the Board for Financing Water Projects, the need to make those funds stretch a little further, and the other is a cleanup of the water regulations. Also, they still need to see what comes out of the Climate Change Advisory Committee.

Commissioner Coyner noted there was always a certain amount of tension between the state and EPA, and asked about the coming end of the (Presidential) Administration and how that might be affecting EPA, and NDEP's relationship to it.

Mr. Drozdoff said that there seemed to be initiatives at the end of the Administration that are headed down paths that will not be realized. But the main problem is that funding continues to decrease, and requirements continue to increase; and this may rest with Congress rather than EPA, but there is a desire to see more numbers, (how many enforcement actions, how many penalties assessed?) and the problem is with less dollars to give them the numbers they need, numbers that don't necessarily tell the story we think is

appropriate. They don't seem to be taking a lot of input from the states, either.

Chairman Dodgion remarked that the tension in the relationship went back to the passage of the Clean Air Act in 1969.

Mr. Drozdoff remarked that he believed that Region IX has tried, and that there are good people there, but Nevada needs to find a way to tell the story so that the Region can tell the story as well.

Commissioner Coyner suggested that next year after a change in Administration the Commission might invite Region IX personnel to a meeting.

When there were no further comments for Mr. Drozdoff, the Chairman moved down the agenda to:

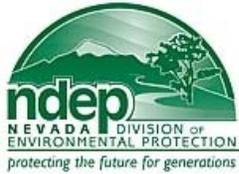
#### **11) Public Comment**

There was no additional public comment under this item.

Mr. Walker noted for the Commission that the next meeting would be June 17 in Las Vegas, at the Las Vegas Convention and Visitors Bureau.

**Adjournment:** When there was no further comment, Chairman Dodgion declared the meeting adjourned.

Appendix 1  
Us Ecology Hazardous Waste Disposal Site



State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

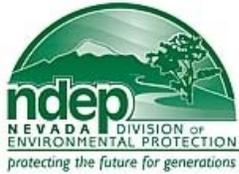
901 So. Stewart Street, Suite 4001, Carson City NV 89701-5249

## U.S. Ecology Nevada, Inc. (USEN) – Beatty, Nevada Hazardous Waste Treatment, Storage and Disposal Facility (TSDF)

USEN operates the facility located 11 miles southwest of Beatty, providing services for the treatment, storage and disposal of RCRA hazardous wastes, consistent with the state-issued permit #NEVHW0019.

The facility is located on an 80-acre site, leased by the USEN from the State of Nevada (State Lands), and surrounded by a 400-acre buffer zone leased by the State from the BLM.



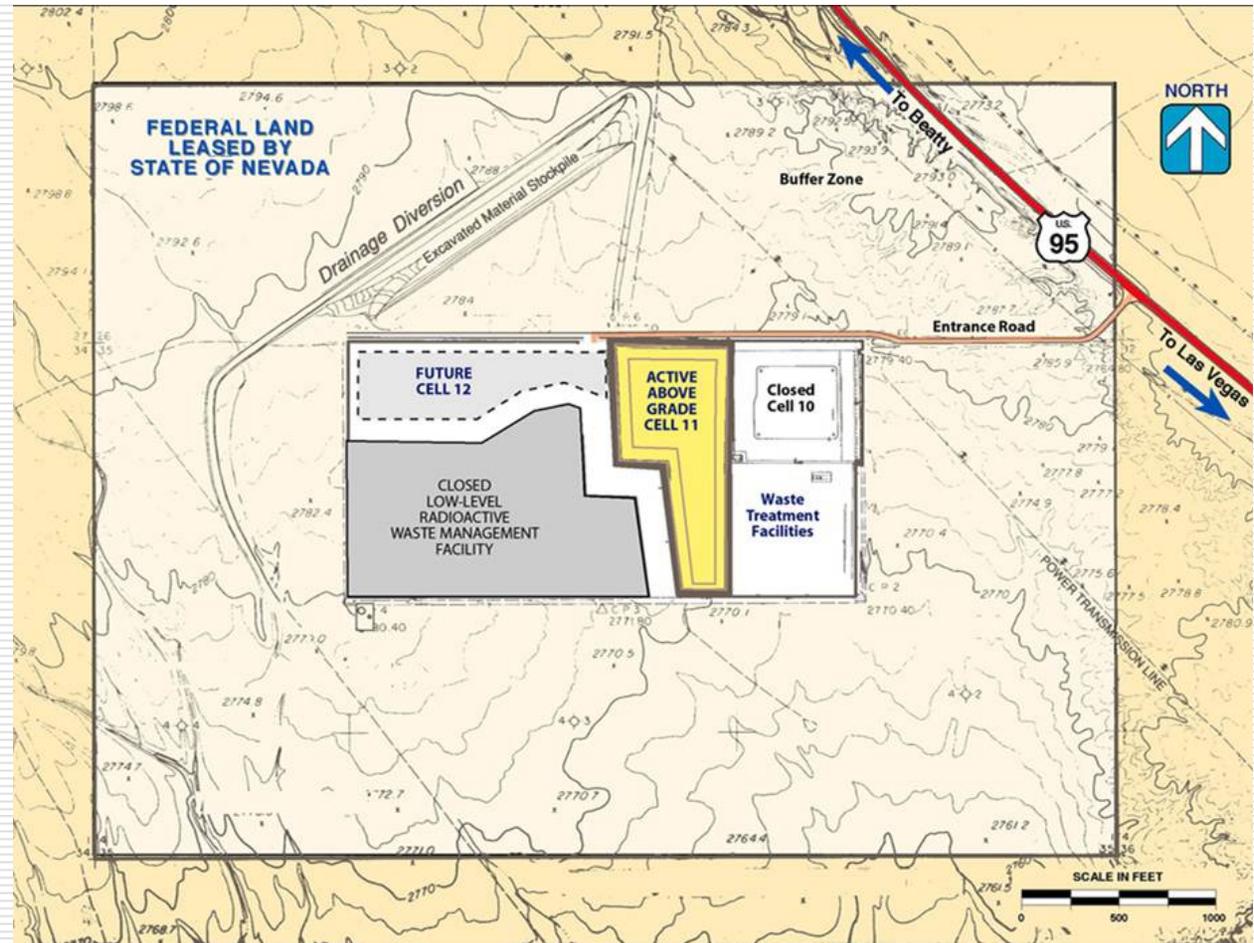


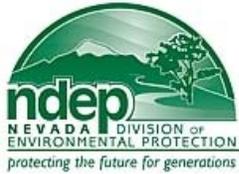
State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

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### Facility Features:

- Remote and secure location away from population center
- Located in arid climate
- Site geology is ideal for landfill
- Constructed with multiple liner system
- Monitored by network of groundwater wells on & off-site
- State owned facility which is leased to USEN for operation
- Surrounded by buffer zone of BLM land which is leased by the State of Nevada
- Only permitted hazardous waste landfill in Nevada





State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

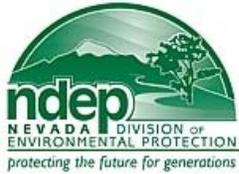
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## Summary:

- Disposal operations at site since 1962
- Acceptance of low-level radioactive waste ceased in the 1980's and the segregated waste area was permanently closed in 1993
- Initially permitted by the NDEP April 29, 1987. Current permit extends to April 2010.
- Operating lease renewed April 2007 and includes mechanism for automatic annual renewals
- Current facility consists of the following:

- Five (5) Hazardous Waste Container Storage Units;
- Five (5) Hazardous Waste (PCB) Storage Tanks, one (1) leachate storage tank, three (3) condensate storage tanks (Low Temperature Thermal Desorption operation);
- One (1) Evaporation Pad (i.e., treatment tank) for truck decontamination ;
- Five (5) Batch Stabilization Tanks;
- One (1) Low Temperature Thermal Desorption Unit (LTTD);
- Three (3) Subtitle C landfills consisting of **Trench 10** (closed), **Trench 11** (existing operating trench), and **Trench 12** (proposed - modification currently under review with public comment period scheduled to close March 17<sup>th</sup>, 2008).

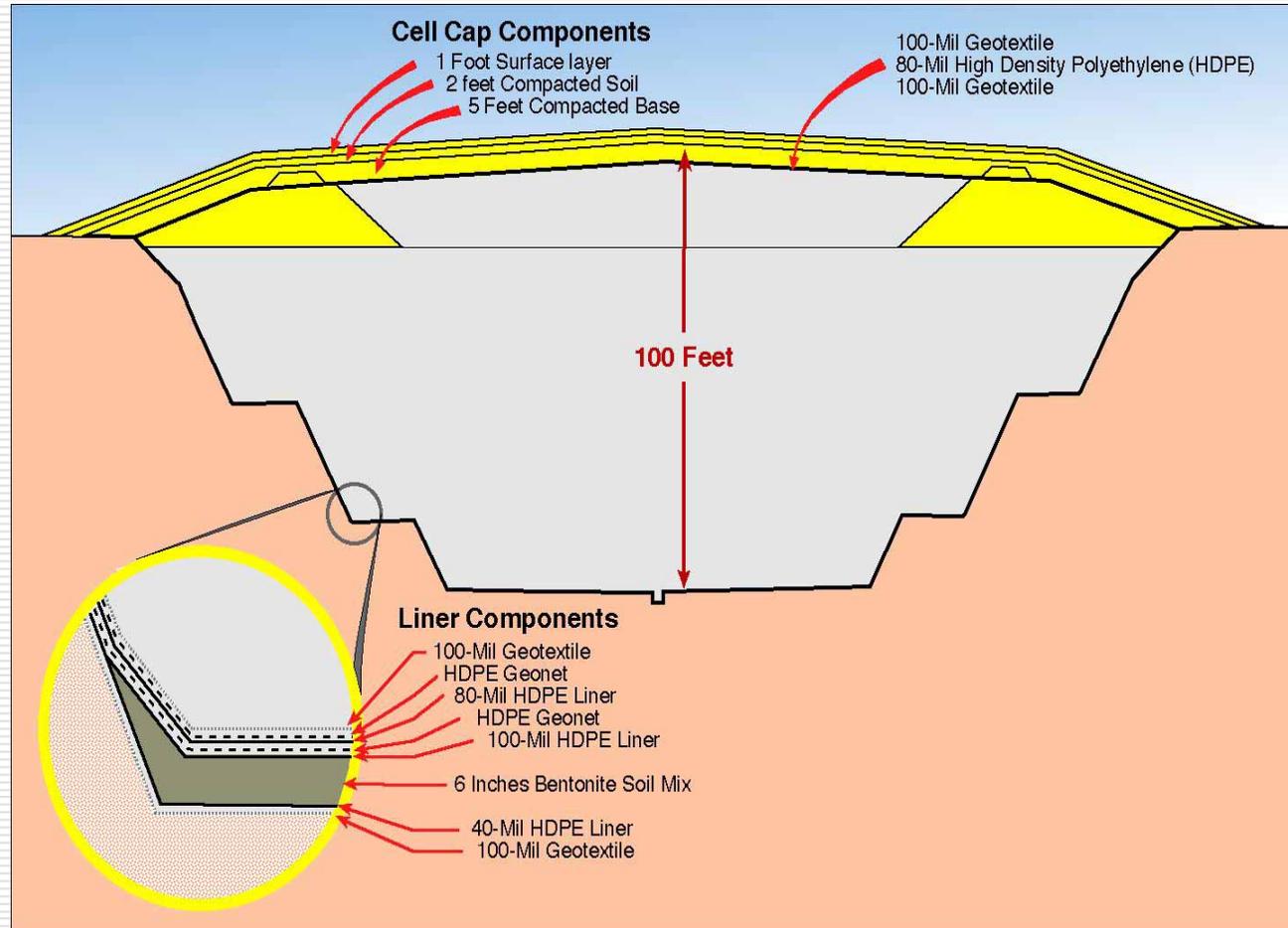




State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

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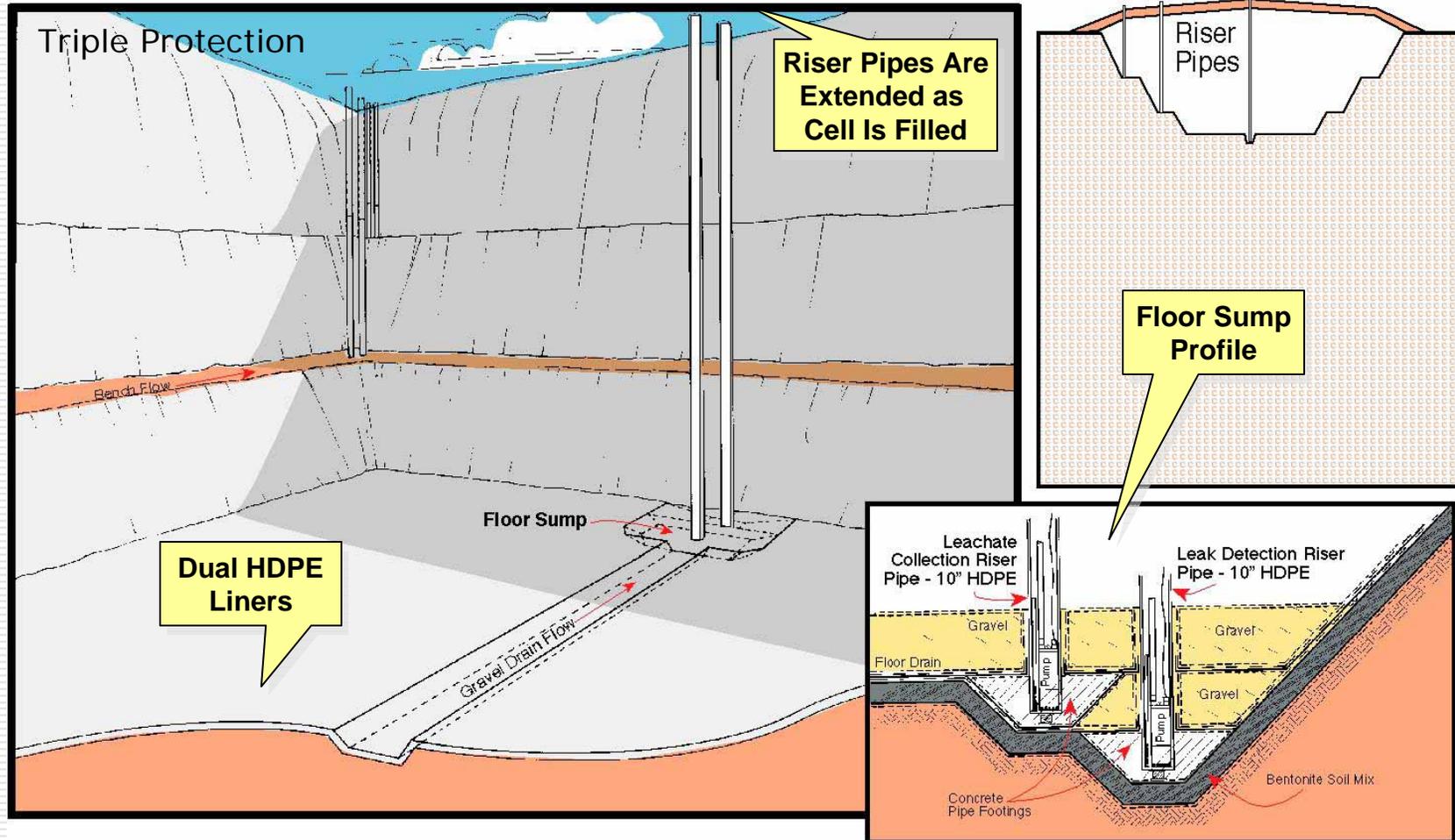
Typical Design Features:

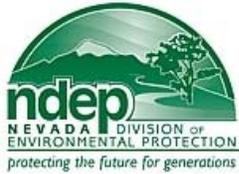




State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

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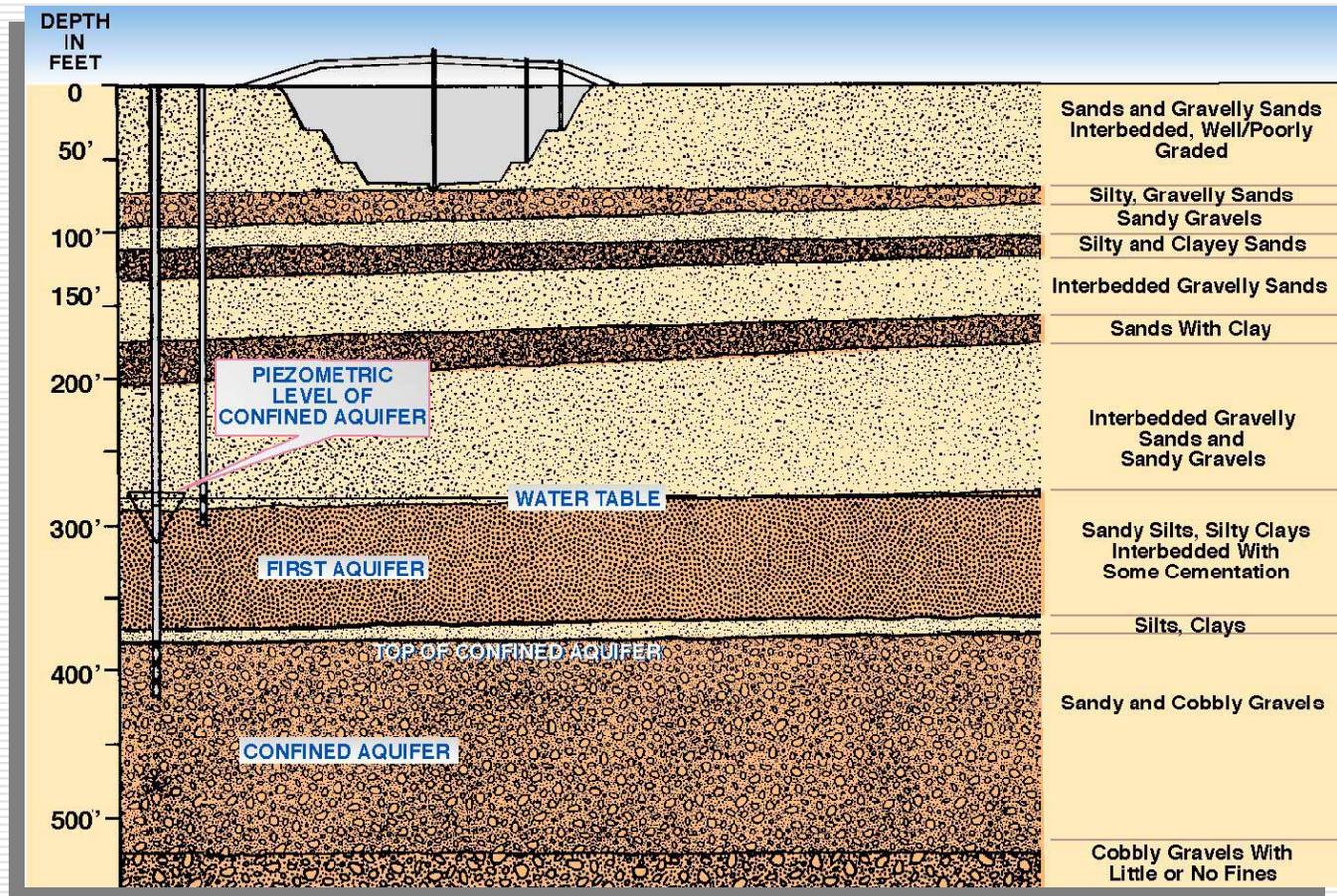


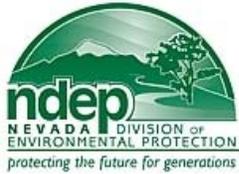


State of Nevada  
 Nevada Division of Environmental Protection  
**Bureau of Waste Management**

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Suitable Geology:





State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

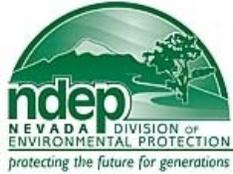
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### NDEP Responsibilities:

- Conduct two fee audits annually
- Conduct one annual groundwater sampling event
- Conduct annual Compliance Evaluation Inspection
- Provide regulatory oversight and technical guidance to the facility
- Interface with the U.S. EPA on regulatory issues regarding the facility



Appendix 2  
Western Elite Disposal Services



State of Nevada  
Nevada Division of Environmental Protection  
**Bureau of Waste Management**

901 So. Stewart Street, Suite 4001, Carson City NV 89701-5249

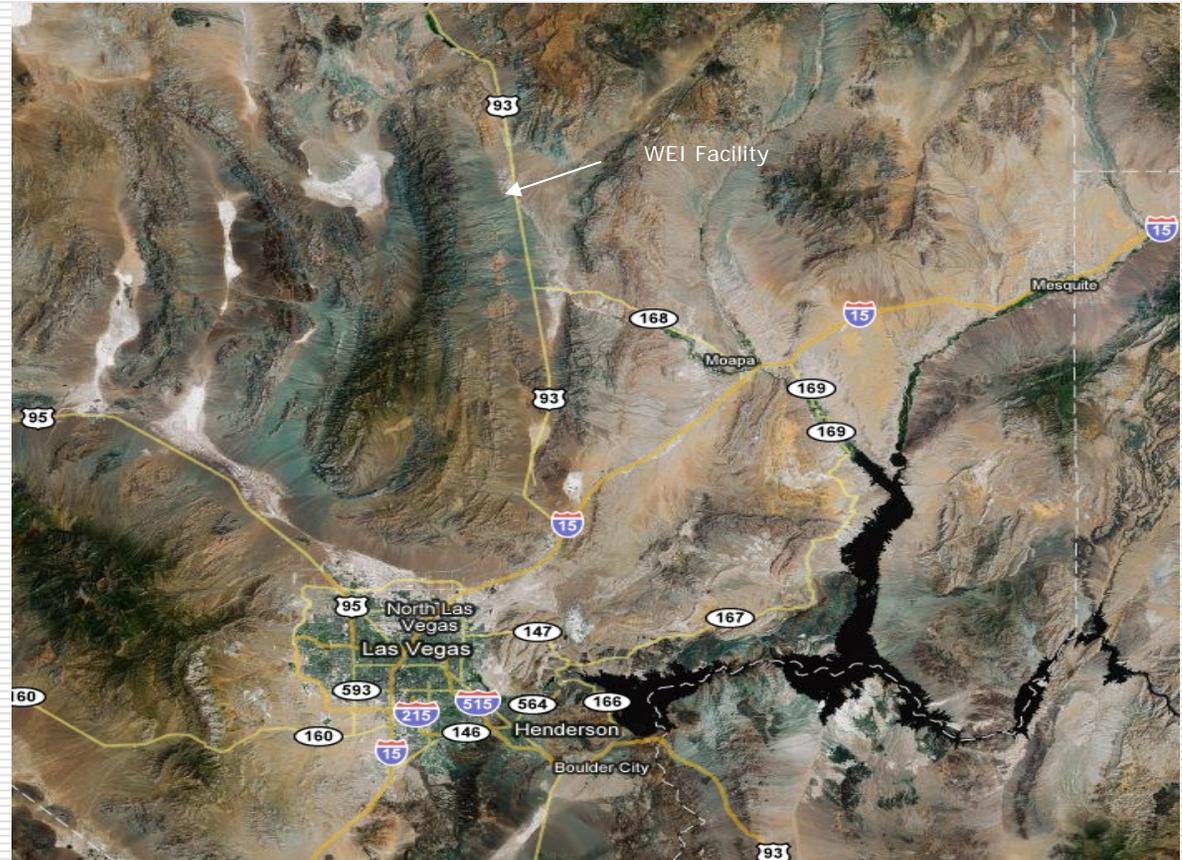
Summary of Western Elite Inc. (WEI) Status

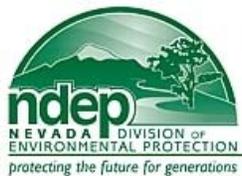
- Consent Decree signed 6/6/2005
- Permit issued 8/19/2005
- WEI begins accepting Permitted waste 12/2/2005
- A revised Stipulation and Order will be issued in March of 2008 clarifying some of the requirements for the timelines related to the movement of the excess waste and submission of documentation

The Western Elite Facility is approximately 65 miles North East of Las Vegas on Hwy 93

- WEI began moving "Excess Material" (~1,100,000 yds) to the permitted Class III Landfill immediately after the issuance of the Permit as agreed
- Currently (as of 2/1/08) approximately 880,000 yd<sup>3</sup> have been moved with approximately 120,000 yds left to move (~80% moved)
- NDEP expects the remaining excess material to be moved by the end of 2008 (Revised Stipulation and Order requires all waste be moved by November 30, 2009) and all material (Gate Waste) to be disposed of in the permitted Class III Landfill

See next Slide





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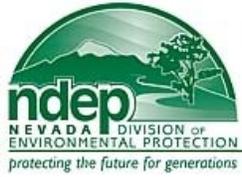
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### Previous state of the Facility

Western Elite was accepting waste under the auspices of recovery of material for the purposes of landscaping and use as a soil amendment from 1996 to 2000. The waste had been managed in an uncontrolled fashion without substantive compliance with the regulations

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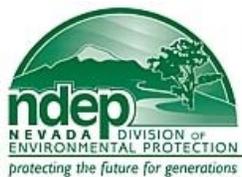


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Previous Management of Waste



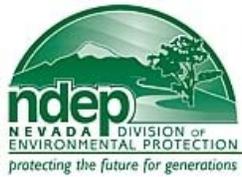


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Previous Management of Waste



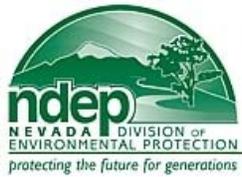


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Excess Waste in the process of being moved



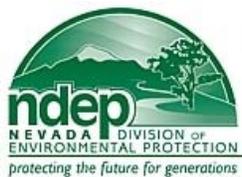


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Excess Waste in the process of being moved





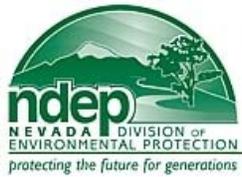
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Excess Waste being placed into Permitted Landfill



06/05/2006



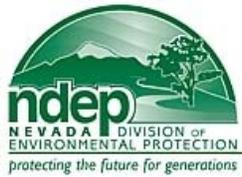
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Liner and Waste in Permitted Landfill



**06/05/2006**

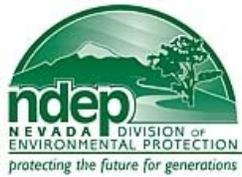


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Current Disposal Practice at Permitted Landfill





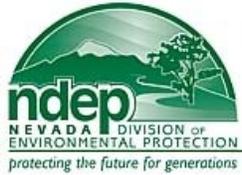
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Current Disposal Practice at Permitted Landfill



Coverage of Excess Waste



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## Current status of the Western Elite Inc. Facility Permitted Landfill

- The disposal practice at the Landfill is consistent with Permit #SW277REV02
  - Wastes accepted are Auto Shredder Residue and Construction and Demolition Waste
  - The Facility is inspected regularly (quarterly )by Las Vegas Staff and has been found to have no significant Compliance Issues
  - The NDEP is maintaining approximately \$200,000 as the remaining portion of the funding for the closure and removal of the Excess Waste from the unpermitted portion of the Landfill in a Trust Fund
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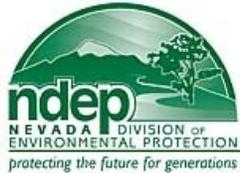
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**1996 to 2000**

- November 1996 - Feb. 1997: Western Elite, Inc. (WEI) begins accepting construction waste at Lincoln County site. NDEP issues FOAV and Order for operation of a solid waste disposal site without a permit, settles for \$2,000 penalty and issues approval to operate a Salvage Yard.
  - April 1997 - Oct. 1997: NDEP issues FOAV and Order for operation of a disposal site without a permit and violation of salvage yard requirements, including failure to remove non-salvageable material within one week. WEI appeals. State Environmental Commission (SEC) hears WEI appeal and upholds NDEP findings, but directs NDEP to work out new terms of operation.
  - Dec. 1997 - April 1998: NDEP approves WEI application to operate a Solid Waste Processing Facility and Compost Plant. NDEP estimates volume of shredded construction waste at 116,000 cubic yards.
  - Aug. 1998 - April 1999: NDEP issues FOAV/ORDER for operating disposal site without permit, failing to comply with conditions of approval, etc. WEI appeals. SEC upholds FOA V IORDER after 2 days of hearings, ordering WEI to remove all ground or un-ground material in excess of 15,000 cubic yards.
  - **2000**
  - May 2000: After one year of motions, petitions and responses, the 9th Judicial District Court in Ploche denies WEI's petition for judicial relief from SEC Order.
  - June 2000 - July 2001: WEI appeals to Nevada Supreme Court. Through preliminary mediation WEI and NDEP finally negotiate a settlement which is filed with the 7th Judicial District Court as a Consent Decree and Order. In Sept. 2001 NDEP issues approval of new operating plan and waste acceptance pursuant to Consent Decree and Order.
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### **2001**

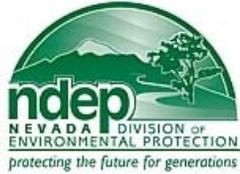
- July 19, 2001: WEI inspection by Les Gould indicates that non-source separated construction waste has recently been accepted at the site in violation of Order.
- July 26, 2001: Letter to WEI from Dave Emme reminding WEI them that the Decree of 7/10 prohibits acceptance of any solid waste until the operating plan has been approved by NDEP. The operating plan was rejected with comments on 7/3/01.

### **2002**

- April 2002 - Oct. ~2002: After inspections showing that WEI has violated operating plan and failed to keep waste-on-site with agreed-upon caps, NDEP issues FOAV/Order revoking approval to operate. WEI appeals to SEC. Hearing set for March 5 & 6, 2003.
- 1/10/02: Inspection by Les Gould documents violations of Consent Decree.
- 0/1/02: NDEP notice of noncompliance with Consent Agreement sent to WEI on advice of Susan Gray, DAG, seeking \$250,000 in stipulated penalties.
- 10/11/02: NDEP Finding of Violation and Order issued, revoking all approval to operate.
- 10/30/02: WEI letter from Lamond Mills responding to 10/1 notice of noncompliance.
- Questions penalty amounts and states that WEI is shutting down commercial enterprise and only processing materials for agricultural use on site.
- 11/6/02: NDEP inspection documents WEI still accepting mixed construction waste.
- 11/7/02: SEC receives appeal of FOAV/Order issued on 10/11.
- 11/15/02: Letter from Susan Gray, DAG, notifying WEI of intent to file application for summary judgment for \$250,000 penalties.
- 11/21/02: NDEP inspection documents WEI still accepting mixed construction waste.
- 12/06/02: 8th Judicial District Court grants judgment against WEI of \$250,000 penalty.

### **2003**

- March 4, 2003: WEI requests temporary restraining order to prevent March 5 appeal hearing. 9th Judicial District Court vacates hearing and holds that SEC has no jurisdiction over issues cited in FOAV - they are subject to court's jurisdiction pursuant to Consent Decree and Order.
- March 2003 - Oct. 2003 - NDEP aerial survey and volume measurement in progress to obtain clear evidence of violation of volume limits in Consent Order. Court has ruled that NDEP must have warrant to conduct inspections. No inspections conducted but it is clear that WEI continues to accept approx 1000 cubic yards construction waste per day. It does not appear that there is any recycling.
- 1/9/03: NDEP inspection documents WEI still accepting mixed construction waste.
- 2/4/03: NDEP inspection documents WEI still accepting mixed construction waste.



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#### 2004

- During 2004 Western Elite and the NDEP had numerous discussions over Financial Assurance and the specific requirements related to assuring both the current landfill and the movement of the excess waste. The NDEP sent out a length Notice of Deficiency on October 20<sup>th</sup> 2004 detailing all the requirements the Western Elite has failed to meet. The NDEP issued a Public Notice of Intent to deny the Permit on 12/30/2004, Western Elite requested and obtained extensions in order to respond to the comments by the NDEP.

#### 2005

- By June of 2005 Western Elite and the NDEP has worked out the problems associated with the application and published a Notice of Intent to issue a Permit on 6/23/05. The Final Permit was issued on 8/19/05.
- In December WEI requested a modification to their current permit to allow Auto Shredder Residue (Auto Fluff [ASR]).

#### 2006

- The NDEP commented on the amendment and once WEI had fully completed their submittal the NDEP issued a public notice in September.
- WEI updated the Financial Assurance for the facility by continuing to fund the Trust Account.
- Western Elite requested a change in the language of the Consent Decree to include more time to move the Excess Waste into the Permitted Landfill. The NDEP responded and engaged in a dialogue to amend the Consent Decree.
- NDEP issued a revision to the Permit in November of 2006 to included the requested ASR

#### 2007

- No specific actionable activity at the Facility other than the movement of waste and the ongoing discussion on amending the Consent Decree.

#### 2008

- Currently (as of 2/1/08) approximately 880,000 yd<sup>3</sup> have been moved with approximately 120,000 yds left to move (~80% moved). There remains some \$200,000 in the Trust Fund associated with the Excess Waste to be refunded at the point in time WEI removes the remaining waste.
- NDEP and WEI have signed (March 2008) a final amendment to the Consent Decree refining the language and extending the timeframe within which WEI may move the Excess Waste