SENATE ECOLOGY COMMITTEE

Minutes of Meeting --- March 9, 1971

Committee Members Present:	Thomas Wilson, Chairman
	Clifton Young
	Lee Walker
	John Foley
	Emerson Titlow
	Chic Hecht
" " absent	Coe Swobe

Also present were:

Glen Taylor	Basic Management Inc. (Chemical C
Merle Atcheson	Sierra Pacific Power Co.
William Robinson	" " " "
Phil Solaro	" " " "
Gene Francey	
W.H. Winn	Kennecott Copper Co.
Howard Gray	" " "
Robert Guinn	Nev. Motor Transport Assn.
C.V. Houck	Anaconda Mining Co.
M.B. Nesbitt	" " "
Ernest Gregory	State Division of Health
Ron Cassingham	State Dept. of Motor Vehicles
Virgil Anderson	American Automobile Assn.
Bill Hicks	Nev. Agriculture-Livestock Counci
Fred Settlemeyer	" " " "
Elmo DeRicco	Dept. Conserv. & Natural Resource
Norman Hall	" " " " "
Gary Jesch	Students To Oppose Pollution
Tom Jesch	" " " "
Don Amodei	Division of Forestry
Paul Gimmell	Nevada Mining Assn.
Ray Knisley	" " "
Ingrid Hanf	Lahonton Audubon Society
William Pickslay	" " "
Kathleen Winters	" " "
Ivan Sack	City of Reno
Georgia Fulston	State Board of Health
Donald Guisto	" " " "
Roy M. Whitacre	Desert Research Institute
Edwin Berry	" " " & L.A.P.
George Basta	National Oil & Burner Co.
John Madsen	Washoe Fuel Company
H.E. Galloway	Nev. Dept. of Agriculture
Albert Caton	Keystone Fuel Company
Mary Kazlowski	Nev. Open Spaces Council
Carl Soderblom	Nevada Railroad Assn.
Wallie Warren	Nevada Mining Association
Ian Kelley	Reno
Byrd Sawyer	Carson City
Daisy Talvitie, Fola Forst, Joan Reid, Catherina Went, Carolyn Lockhart, Ruth Cutten, Malvene Rowe, Sonia DeHart & Mrs. William O'Malia	League of Women Voters
	" " " "

(Cont.)

Chairman Wilson called the meeting to order at 2:40 p.m. and said the purpose of the meeting was the continuation of public hearings of several bills on which testimony was heard in Las Vegas March 5.

Under consideration were:

S.B. 275 A new air pollution law.
&
S.B. 118 Requires registration of manufacturing products, production materials and waste products where certain wastes discharged; provides for surveillance fees upon discharges.
&
S.B. 15 Solid waste management law.

The first witness was Mr. Glen Taylor, General Manager of Basic Management, Inc., of Henderson Nevada who noted members of B.M.I. included: Titanium Metals Corporation of America; Stauffer Chemical Company; Kerr-McGee Chemical Corporation; and Flintkote Company.

MR. TAYLOR: Gentlemen, I wish to thank you for the opportunity to appear before this Honorable Committee today. I have been authorized by the members of B.M.I. to state to you that we feel that the State of Nevada should have a good and workable water pollution and control statute.

With this in mind, and as the members of B.N.I. and myself have had an opportunity to study Senate Bill No. 118 and have recently received from the Legislature another Act numbered A.B. 482, I will base my discussion around these two acts.

I realize that this is not a hearing in regard to A.B. 482 and, therefore, will not endeavor to may any constructive suggestions for amendments to that bill. However, I wish to go on record today as indicating that we feel the ecology problem pertaining to water pollution would be better served if A.B. 482 was considered in its entirety with any suggestions which may come from interested citizens hereafter to be adopted into law rather than Senate Bill No. 118.

We make this suggestion, not in criticism of Senate Bill No. 118, but in studying A.B. 482 feel it has gone into far greater detail pertaining to definitions and other potential problems that might arise in the State of Nevada in regard to our water pollution problems and, therefore, might serve tha state better if favorably considered.

CHAIRMAN WILSON: Mr. Taylor, S.B. 118 requires the registration with the State Department of Health of manufacturing materials carried off with water, whether put into a river, a tributary or stream, and as the bill may be amended, whether ponded anywhere in the state. The idea being that if they are ponded a certain amount of that will percolate down and possibly pollute an aquifer* or sub-basin.

*A porous soil or geological formation lying between impermeable strata in which water may move for long distances, yield ground water to springs and wells.

(Cont)

CHAIRMAN WILSON: A.B. 482 is an act which creates a water pollution control agency and establishes jurisdiction and sets up by definition, terms what the act is applied to and what it means, but I don't think it requires the registration of pollutants does it?

MR. TAYLOR: I don't think so, but in setting up the regulations this could be required under them and we would hope it would follow closely the Federal Act.

CHAIRMAN WILSON: You've treated S.B. 118 and S.B. 482 as alternatives and S.B. 118 really doesn't seek to create a pollution control agency, as such, but It does seek to require the obligation to report by volume and chemical constituency, industrial materials carried off by waters which may either pollute or have the potential of polluting either sub-basin water in a desert valley or stream water in a water-shed.

Don't you think the registration requirements are a reasonable step and at least give a hand along the extent and nature of water pollution problems?

MR. TAYLOR: I think we could agree with the registration, provided with amendment to it respecting confidentiality of that because I think recalling S.B. 118 not only asks for registration of the waste material but the intermittant process materials, also. From that, a good chemist on a so-called secret process could back right in and you would be giving away all your trade secrets.

CHAIRMAN WILSON: This is one of the things we discussed in Las Vegas last Friday and do you, or the members of B.M.I., have any language they want to generally suggest in regards to confidentiality?

MR. TAYLOR: I think the confidentiality in the section we used in the testimony on S.B. 275 would also apply to S.B. 118.

CHAIRMAN WILSON: That language would be satisfactory to you?

MR. TAYLOR: Yes.

CHAIRMAN WILSON: That language provides that while this information, once filed, is not public record as such, nonetheless it's freely used in any enforcement or abatement proceedings in the event pollution is found by the Department of Health, to be a problem...if someone seeks to abate, limit or regulate someone.

MR. TAYLOR: Yes, but the language that we suggested that you amend would still protect it. It would be a felony if someone transmitted this or violated what's confidential and (sold to) a buyer...it would be a felony against both parties.

CHAIRMAN WILSON: That put's teeth in the unauthorized release of information, but you understand that as far as pollution abatement or control is concerned, that information obviously would have to be used in respect to that activity.

MR. TAYLOR: Yes, it would, and that would be the reason you would be trying to register it to find out those things.

(Cont)

CHAIRMAN WILSON: We have such language in S.B. 275 but it's not specified in S.B. 118. As far as you are concerned, the language in 275 which you recommended, be used in 118, to stiffen to felony penalties for violation of cofidentiality?

MR. TAYLOR: Yes.

SENATOR HECHT: Where did the language in A.B. 482 come from?

MR. TAYLOR: I got it in the mail...I don't know who drafted it.

JOAN REID: It is patterned after the Colorado law.

(End of verbatim transcript.)

Mr. Taylor submitted copies of statements made by Mr. Herb Jones during the Las Vegas Hearings and requested they be made a part of the record relative to S.B. 275. (See attached.)

Mr. Merle H. Atcheson, Senior Vice President of Sierra Pacific Power Company, Reno requested permission to testify in regards to S.B. 275.

MR. ATCHESON: I want to point out to the committee that the utility industry in Nevada has had a fairly clean reputation. Sierra Pacific has two power plants, both of which have been deliberately located outside of populated areas.

The cooling systems are connected with cooling ponds to minimize the thermal pollution of streams. Our power plant near Yerington is not connected with the Walker River, except for small overflows.

I would like to request the committee to consider in Section 11 of S.B. 275, the appointment of some person in the utility industry to membership on that board. We have had excellent relations with the Public Utilities Commission and the Fish and Game Commission for 30 years and I believe we could have good relations with the Fish and Game Commission on any board that's set up for fish and game work and I sincerely request the utility business be represented on the board.

CHAIRMAN WILSON: There's been a good deal of discussion about the composition of the board and whether the structure of this act is going to be an independent agency or whether its going to go into the Department of Health as a division of the existing governmental structure.

One alternative which was raised in the course of the hearing which we've already had on the bill, the board as prescribed in S.B. 275, as drawn, is a board comprised of heads of various state agencies, six or seven of them...All of them were outside of industry and all are full time government employees. I'm just throwing this out as an alternative...Do you think the Public Service Commission ought to be included?

MR. ATCHESON: Definitely. I think our relationship with the Public Service Commission, regardless of the political party in influence at the time, has been excellent and to my knowledge, for 30 years, and I've worked for Sierra Pacific for 36 years, and I don't know of any serious disputes we've ever had with the Public Service Commission.
(Cont)

MR. ATCHESON: I think it would be quite desirable to have somebody from the Public Service Commission on such a board.

CHAIRMAN WILSON: Is your interest in having somebody from the utility business included on the board prompted by a leaning of a need for expertise or a feeling that a board ought to have some kind of industry-non-industry balance, as it were?

MR. ATEHESON: I believe some of each would be desirable. The Public Service Commission member could ask the utilites for specific expertise and information and reports and get them. Perhaps the board could get it, too. I presume there are other industries that would like some representation, too, but the way this board is set up under this particular 275, we're sort of at the mercy of the Governor, at the moment, for example, you know. Maybe that's all right but I think the utility business would be. Now, we have clean stacks and clean water and we've behaved pretty well, but I just think we need a spokesman in the group from the industry.

SENATOR FOLEY: Along this line, I think one of the things that was developed quite thoroughly in the Las Vegas hearings was the satisfaction with the hearing board that is presently constituted down there.

I wanted to ask, maybe Jean knows, of the qualifications of the members on that board? Has that been spelled out?

MRS. JEAN FORD: Mr. Francy could probably better answer that. The only thing I know is that there's no conflict of interest on the board.

MR. GENE FRANCY: The Board in The Clark County Health Department, the hearing board, that's what you're talking about?

SENATOR FOLEY: Yes.

MR. FRANCEY: We're very satisfied with the composition of the board. It's made up of doctors, lawyers, engineers and a mineralologist...

SENATOR FOLEY: Is there an ordinance on that...?

MR. FRANCY: There's rules and regulations for operation of _____ in Clark County. The board has been in operation _____ _____ 197 We've had before the board, most major industries in the area and have found the board to be completely satisfactory. It operates well; they are knowledgeable; and they know what they are doing and understand what we're talking about. They are an excellent board.

CHAIRMAN WILSON: Does the ordinance specify how the board be constitute

MR. FRANCY: No.

CHAIRMAN WILSON: Who appoints the board, the County Commissioners?

MR. FRANCY: The District Board of Health.

SENATOR FOLEY: Is there some guidelines in writing for the selection of the membership?

(Cont)

MR. FRANCY: There aren't any...

SENATOR YOUNG: How many members are there on that board?

MR. FRANCY: Five.

SENATOR FOLEY: As I understood the testimony down there, (Las Vegas) there has not been one appeal taken to court from that board...it looks like the type, perhaps, that should be incorporated in S.B. 275.

SENATOR YOUNG: Merle,(Atcheson) what would you think would be the ideal composition of a board? In the past, studies throughout the country would indicate that certainly industry has not been under-represented on these boards, nor have they been under-represented, probably, in Nevada, in the past. I'm sure we're trying to get something that's fair. You mentioned your company, suppose we had a seven-man board? How many do you think should be there from industry and how many from non-industry?

MR. ATCHESON: It's pretty difficult to answer off the top of my head, but I would think that if a non-utility industry and the mining industry and the utility industry would be three and then...

SENATOR YOUNG: Then, mining would come in and agriculture, I'm sure, and the first thing you know you've got a lot of the vested interests and the public feels under-represented, this is one of the problems.

MR. ATCHESON: Well, agriculture should be represented...perhaps the board would be too small with seven.

SENATOR YOUNG: If you have any thoughts on that I'd appreciate it, even later, if you'd give them to me.

MR. ATCHESON: Thanks, Senator. I'd be pleased to think some more about it. I just came here to make a plea for the utility business because they've done so good in Nevada and they've done so badly in Pittsburg and Philadelphia.

SENATOR YOUNG: Well, I think your company has a good conservation record.

MR. HOWARD WINN; Gentlemen, I'm general manager of the Kennecott Copper Corporation, Nevada Mines Division of McGill, Nevada. I'm also speaking today for the Mining Advisory Board.

Perhaps, to provide a frame of reference for my testimony* concerning this proposed legislation, I should begin by saying that, for several reasons, amendments to our present air pollution law are needed. With some changes, this bill could provide the needed amendments and with those changes, which I will review in detail in a moment, I would urge passage of the bill (S.B.275.) I should also make it clear that I fully understand that the will of our citizens of Nevada and of our entire country has been forcefully expressed concerning a requirement for clean air. I personally, together with my company, agree with this thinking and take the position that clean air will be a reality in a reasonable length of time. The 25% of the pollution produced by industry will be mostly eliminated within the timetable prescribed by federal regulation. The 75% produced by others is a more difficult are in which to forecast.

(Cont) *See attachment 2

MR. WINN: If I may, I will summarize the purpose of my remarks before I begin. As this committee considers proposed legislation concerning air pollution, it should approach the problem with a determination to achieve results which will assure protection of the air quality in Nevada. However, you gentlemen must be equally determined to achieve this with the smallest possible adverse impact on the industries and local government of the state.

After the problem of clean air has been solved and perhaps forgotten, the Legislature will still be facing the equally important problem of Nevada's narrow tax base. The only change will be that the need for revenue will be greater than it is now and more difficult to come by. With this introduction I would like to go into the details* of the changes I think are appropriate in Senate Bill 275.

Section 2.2: This section is too broad as it is written and perhaps poorly worded. I don't believe that the person who wrote the bill meant to say that everyone had to use all the methods to prevent pollution. I think what they meant was that the board should have available to them all methods that might be usable to solve the problem. As it is written you conceivably could require everyone to use every method, which of course, wouldn't be appropriate.

The expression"require the use of all available methods" applied universally could result in much more stringent regulations being applied than are actually needed. The wording"as may be necessary to achieve Section 2.1 above" should be added. This requires that regulations shall be applied for the purpose of the act, and not regulation for regulations' sake.

It's just a clarification that I think is necessary there. In my experience of administering statutes, several years, I've discovered that it is real important to say exactly what you mean in the statutes because if you don't, years later someone has trouble determining what it was.

Section 4: A change would clarify the meaning. Water vapor and carbon dioxide are components of the atmosphere and are generally excluded from the classification of air contaminants. Water vapor, as you all know, is discharged from cooling towers, and comes from irrigated fields and places like that.

Somebody in Las Vegas said the other day "even perspiration from people." Carbon dioxide comes from people and animals and even more importantly the combustion of all carbonaceous fuels in power plants, automobiles,etc. Several hundred tons of carbon dioxide are discharged into the air each day in Nevada.

Previous testimony has said that isllated local problems could occur such as fog across a highway. It was indicated that the designation as a pollutant should be retained for these isolated cases but that these compounds would not generally be administered as pollutants. This approach is not possible. Anything described in this statute as a pollutant must be administered as one. A citizen who objected to the humidity emanating from irrigated fields could say that his esthetic senses were being violated, that water is a pollutant and demand in court that the board take action to prevent pollution. The board would be hard pressed to do other than treat the water as a pollutant.

*see attachment 3

(Cont)

MR. WINN: You cannot designate anything as a pollutant which you don't intend to have full administrative treatment as one. The problems which could arise from water and carbon dioxide should be handled by the nuisance law.

Section 11: I strongly object to this section, as have other people from industry. I realize its purpose is to deal with the allegation by various conservation groups and governmental agencies that some states have ineffective air control boards because they are predominately made up of members of industry. This thinking is fallacious and abundant proof is available around us. There are innumerable members of industry on boards and commissions in Nevada, and the record will clearly show that they are conscientious toward their assignments and completely responsive to their duties of carrying out the wishes of the Legislature.

Be that as it may, this particular board cannot afford to be deprived of much of the expertise that is available in the field of air pollution control. I'm sure you are aware that almost everyone is on the bandwagon and can answer lots of questions about air pollution. A close examination will show that what often exists is pseudo knowledge mixed with emotion. Such will not help this board. If it is to accomplish the extremely difficult job of complying with the responsibilities connected with the federal air pollution law, the board will need all of the real know-how it can possibly assemble. As a minimum, I strongly recommend that there be a provision for at least a minority of industry and local governments on the board.

SECTION 13.5: I suggest that wording be added to automatically adopt federal air quality standards. The purpose is to simplify administration of the law as the setting of air quality standards is always tedious and rather a painful process. Some people are never satisfied that the regulations are strict enough, whatever they are. Likewise, there are those that always think they are too strict. I believe if you will review the proposed federal standards that you will find that they will well serve the purpose of providing clean air.

SECTION 13.12: I have proposed that two ideas be added to this section on emission controls. The first, which requires the highest practical emission limitations on new sources is properly compatible with federal regulations. The second addition requires careful consideration before any emission control regulation for an existing source is exercised which reduces emission more than necessary to achieve the adopted air quality standards. This type of limitation is extremely important to protect those being regulated from over-kill which would result in a financial hardship being imposed. The proposed wording does not prohibit such regulation but requires careful consideration and balancing of benefits with costs. In this case, the first consideration is given to the source as it should be. This proposed section will, in some small measure, help to replace the protective clause contained in the old statute, Section 445.525 and not replaced in this one.

SECTION 13.14: This section as written seems to prohibit everything and perhaps some wording has been left out. It can be clarified by adding the words "without the possession of a valid operating permit issued by the board."

(Cont)

MR. WINN: Section 13.20: It is my feeling that this section should be eliminated altogether since it is extremely vague in definition. It would be next to impossible for administrators to fairly determine what is "unreasonable" and what is "undue." These powers are well covered under the sections describing the permit system.

Section 24.1 (b): Wording is added here for clarification and insures that costs of operation of control devices or processes be considered.

Section 39: I have assumed that the purpose of this section is to specifically provide that compliance with this air pollution statute does not prohibit individual suits for damages. I see no reason why this wording should be in an air quality law. I would recommend that it be omitted. If it is retained, it should certainly contain the same modifying language contained in the federal air pollution law on citizen suits, which allows a suit to be filed only after 60 days notice to the board and to the alleged violator. Also, it is recommended that reference to collection of damages be eliminated. Again, this is an air pollution law and not intended to enter the area of damage collection which is covered in other statutes.

Section 40: The penalty section has a rather strict penalty to be applied to everyone. If applied to a small businessman or farmer, he could be financially ruined. Consideration should be given to reducing the penalty to meet the degree of violation. Also, there should be wording added to prohibit applying a penalty without notice of violation. If a penalty is to be corrective rather than punitive, such notice is necessary. Again, borrowing wording from the federal law, "a notice of 30 days should be provided."

The changes which I have recommended to you will not hamper the board in carrying out the intent of the statute...to protect and improve the air quality of the state. Neither will they cause any problem in compliance with the Federal Clean Air Act.

They will, however, constitute some measure of protection for those being regulated. It is a mark of good legislation that regulatory laws always contain this thought of protection. If left out, the law is weakened rather than strengthened because those regulated spend their energies trying to upset the law rather than in complying with it.

The field represented by this law is particularly susceptible to pressure and action groups and, as a result, it becomes even more important that the Legislature clearly spell out its intent which I very much hope is the achievement of clean air with minimum impact on the industry and local governments of the state.

(End of verbatim transcript)

Mr. Winn furnished the committee members with a list of amendments he proposed to S.B. 275 (See attached*) He also submitted copies of the seven kinds of legislative authority needed by states in order to comply with the requirements of the Federal Clean Air Act (Also attached°.) He emphasized that the members should note there are only seven requirements and not 14 as was stated by Mr. David Calkins when he testified during the public hearings held in Las Vegas on March 5.

(Cont) * Attachment 3
° Attachment 4

INSPECTOR RON CASSINGHAM:...I am from the Nevada Highway Patrol and today I am representing the Director of the Department of Motor Vehicle ...I am certainly not an expert on ecology or air pollution, but the D.M.V. is somewhat confused about a very few things in S.B. 275. Any remarks that I make should not, however, be construed so that the D.M.V or the Highway Patrol is opposed to ecology measures.
(End of verbatim transcript)

Inspector Cassingham explained that some portions of the subject bill, as drawn, could present a variety of problems for the D.M.V.

Regarding Section 11, subsection 7: He said it was not clear as to the amount of "technical support and staff" that the department might have to provide. He noted that if it were necessary for the D.M.V. to increase its personnel that there are no provisions for funding such an increase, under the budget presently being considered by the Legislatur

Regarding Section 13, subsections 18 and 19 and Section 28, subsection 3: He pointed out that establishment of fuel standards and requirement of installation of exhaust control devises for motor vehicles and the establishment of visibility standards for control of contaminants emitt by motor vehicles could present enforcement problems.

INSPECTOR CASSINGHAM: ...I don't know how many devises would be require if we had to enforce this, pertaining only to motor vehicles, and what these devises would cost. At the best, we would get haphazard enforcement with our personnel. We're fairly sure that to get any effective enforcement with our present personnel that we would have a pretty good investment in equipment.

In Section 28, which requires registration of vehicles shall be cancell and not restored...by what authority would they be cancelled? This is a problem to us because it is an enforcement and clerical load, and someb has to order cancellation because of contamination.

In Section 40, lines 14 through 23...violations of provisions of Sectior 2 to 40 of this bill are civil offense matters and administrative fines could be levied, with the exception of Section 35 which indicates the only criminal offense involved, being a misdemeanor for release of confidential information.

As peace officers we can't enforce civil offenses. We can only act upor the issuance of a legal document from a magistrate, justice of the peace or court of jurisdiction. I don't think that the way the bill reads at this time that the D.M.V. has anything to enforce because there is no criminal act involved. Neither I, nor the deputy attorney general, find any place in the bill, except for judicial review...

CHAIRMAN WILSON: ...You can impound a vehicle though if it does not have certain operative equipment which satisfies prescribed regulations now, can't you?

INSPECTOR CASSINGHAM: If we have the authority to do so, yes. For instance, unsafe vehicles, abandoned ones, those needed for evidence, etc. we can impound. But, we really don't have any authority and I don't thin the registration department has the authority to cancel a registration o a vehicle unless done so on the official order of a magistrate or court.

(Cont)

INSPECTOR CASSINGHAM: If this bill were amended, not that I recommend amendment, but as far as that pertaining to motor vehicles that it was a misdemeanor to operate without emission control devices, then it coul be cited and enforced.

This in turn, could go right back to, and require an amendment to NRS 484.611, subsection 2. That presently states that the engine and power mechanism of every motor vehicle shall be so equipped and adjuste so as to prevent the escape of excessive fumes or smoke. Now, I thin if we're going to have standards that would have to be amended somethin to the effect that it shall not emit air pollutants in excess of those allowed by the State Board of Environmental Protection.

CHAIRMAN WILSON: Do you presently have the jurisdiction to cite for violation of 484.611?

INSPECTOR CASSINGHAM: ...Who can determine what is "excessive smoke or funes? We can, however, give a traffic citation though.

CHAIRMAN WILSON: Here's what I'm getting at. We're talking about the creation of an air quality system under which certain regulations would be promulgated. Those regulations, once promulgated, are going to spec standards as they may relate to motor vehicles, etc...If given a standa by regulation, if measurable, will you have the authority under 484.611 to plug in your standard citation where its a civil crime?

INSPECTOR CASSINGHAM: Something will have to be done, at least in one direction or another. There is a certain conflict in this area.

(End of verbatim transcript)

MR. W. Howard Gray was the next witness, and stated he is a practicing Reno attorney, today representing the Kennecott Copper Corporation and The Nevada Mining Association. He commented on some proposed amendment to S.B. 275 which he submitted to the committee. (See attached*.)

MR. GRAY: The first amendment is actually an adaptation of NRS 445.525. That section appears in the present law governing air pollution control It sets up different classifications of facts and circumstances which t board should take into consideration in arriving at a conclusion concer ing the scope and controls of the individual using air. This certainly as indicated, we believe as a necessary requirement in the statute.

Necessary because we find in the drafted act S.B. 275, Section 22, sub-section 2, where the question of variances is described. We find this language, a variance shall not be granted unless the board considered the relative interests first; the public, second; other owners of prope likely to be affected by the emissions, third; and last, the applicant. ...We feel that such language strongly indicates that the applicant see ing the variance is the life to be considered. We certainly do not fee this is a healthy approach to legislation. This section, as we believe, balances out the interests and the influences of the various parties. (End of verbatim transcript)

Mr. Gray then read his "Proposed Amendment No. 1 to S.B. 275."

(Cont) *Attachment 5

MR. GRAY: We believe that each one of those subsections are important facts to guide the board.

SENATOR FOLEY: ...I'd like to ask you a few questions, particulary about your proposed amendment number 4, which is on the judicial review

MR. GRAY: Again, that is left with some of the present code. Senator, I'll have go go back just a little to give you the real reason why I put this in. We have, in three instances in the proposed act, reference to the Nevada Arbitration Act, The Administrative Procedure Act and thei is references to appeals. I thought it was necessary or desirable, at least, to have this particular section spelled out.

In this particular act and the previous act so that it will be clear that we would have an appearance to the court that the procedure was cleared away, the review should be by trial de novo so that the hearings had in the district court pursuant to Subsection I shall have to take precedence over all other matters.

SENATOR FOLEY: This was raised also in Las Vegas. Many people offered this question, the idea of judicial review under the normal procedure, the Administrative Procedures Act, where only the court reviews the recc and determines if there is substantial evidence to support that city. This is considered unsatisfactory by representatives of industry in Clar County, and I presume these are your feelings too.

Now, I wonder if there isn't an answer to this particular problem. As a matter of fact, when you're reviewing an administrative agency, a great deal of time is lost in the preparation of the record of the transcript after they hear a trial and many months go by, it's a practical matter. I wonder if we would have it so that perhaps this time shortening, when the industry or whoever is agreed by here, could petition for the judici review...and then this be put on the calendar, as you said, with the exception of criminal matters or maybe ahead of criminal matters. I don't know why the Legislature couldn't do this.

MR. GRAY: There's no reason in the world. I think it lies within your power. I don't know of anything in the constitution that would prohibit it.

SENATOR FOLEY: So, for instance, if you had a hearing before this board and it concluded on a Thursday, and it was adversed to an industry, if they wanted to most fast, they could petition right away, get into the court and have a hearing maybe within 10 days or something like this. Everybody could get their matter completely reviewed before the court and the experts that were offered to testify at the administrative heari would still be available and could be called again to testify at the cou Now this is the thing I've been kicking around with a lot of people and I wonder what your reaction would be to that type of a way.

MR. GRAY: Well, if I understand you correctly, Senator, you...being de novo, you wouldn't have to wait for the old record, unless you want to use the record for purpose of impeachment.

(Cont)

SENATOR FOLEY: that would be, if somebody wanted it, it would be their business to get it, I would think...just like you get depositions ready for a trial...It would seem to me that this would satisfy both the dema or request of industry to have the protection of judicial review and the demand of the public that it doesn't get bogged down and maybe a year elapses and there's a restraining order or something of this nature in the meantime.

MR. GRAY: Certainly Senator, we're not asking for anything to kill time One thing though, that is detrimental to our judicial procedures at time I think, is the haste with which we approach the subject matter and dispense with it...

Now, in this particular instance, after we've got 30 days, 10 days, we'd have no objection to it and if there is a trial, let's have a trial de novo, try it over again. And give it precedence over criminal matters i you feel that it should be that way.

SENATOR FOLEY: It seems to me that criminal matters have a broad course of public interest but something like this would have an even broader interest that would need the attention of the court and command the resources of the court to be made available over anything else.

MR. GRAY: Senator, I think you'd find us agreeable to take most any procedure so long as we have that review right together with the trial de novo and give us such presents over other matters in court as you feel that is proper.

SENATOR YOUNG: Howard, do you know any other place where that sort of procedure is followed where there's right for a trial de novo right away and wouldn't this create some delays, bogging down in the trial fire of judicial process?

MR. GRAY: Trial de novo, I don't think, would take any additional time. As a matter of fact, the procedure of our Public Service Commission and the statute creating that, to my recollection, calls for a trial de novo when the appeal is taken from the orders of the commission and goes into the court.

CHAIRMAN WILSON: If they have an option, they can either take evidence in the nature of securing by trial de novo or they can remand the further taking of evidence by the Public Service Commission...

MR. GRAY: As a matter of fact, under that procedure, if new evidence is introduced by any party, that new evidence is sent back to the commission for the commencing weighing and adjusting, or it can be taken. That part is left out of this though, and I would not urge it to go back to the board again for further orders because that would be consuming time if time is of the essence... I think you'll find us cooperative in anything cutting down time so long as all parties, and I say all parties, both parties, have all the time necessary to present their evidence and make their showing.

SENATOR YOUNG: Are these likely to be lengthy hearings?

MR. GRAY: I wouldn't imagine they'd be so involved...It would be a question of several things: a charge that someone had started up without a permit...or somebody violated the termination of a variance, that is trie to operate after a variance had been terminated, and things of that kind. (Cont)

MR. VIRGIL ANDERSON: ...I represent the Triple A. Basically, Mr. Chairman, we're in support of the concept and theory of S.B. 275... there are certain provisions, however, that have been touched upon that affect motor vehicles, which we are concerned about as an auto owner organization.

After market installation...the bill specifically provides or would authorize the installation of exhaust-control devices...of those considered down in California, that would have been adopted to this same purpose, had a price tag of $150 and a potential $50-a-year maintenance cost. They were the catalytic muffler-type device that had a special compound that went into the muffler...the element in the muffler had to be recharged every year to have a useful life. Catalytic devices were the ones first considered by manufacturers and California for retrofitting on old cars that didn't have them initially equipped...Insofar as used vehicles are concerned, the federal law has required exhaust devices since 1968 and in talking about older vehicles, the kind of cost would affect persons in the lower economic bracket.

Insofar as inspection is concerned, we agree with Mr. Guinn's comments (See attached*.) We're not only talking about devices where motor vehicle are concerned, but systems...many of the later model vehicles, particularly, have engineered systems that affect air-fuel ration, carboration, timing, etc...You can't visibly inspect and see whether there is a device in it or not, you have to put on a machine to see that it's working and functioning properly.

We also are concerned about the revocation of the registration. We think this is a harsh, unnecessary and unworkable penalty. A misdemeanor, with what ever punishment you gentlemen wish to prescribe would take care of this just as effectively.
(End of verbatim transcript)

Senator Young questioned Mr. Anderson about control-type devices. Mr. Anderson stated there has been a regular progression over the years of new systems or devices but that basically the three types are "the crankcase, the exhaust and the evaporative devices."

Mr. Anderson further explained that since 1963 federal law has required crankcase devices on all vehicles, and the devices recirculate the crankcase gases. Starting in 1968, federal law required all passenger vehicles be equipped with exhuast control devices. Two types of devices originally installed by vehicle manufacturers were the air pump system which pumped or circulated air into the exhaust ports; the other was the muffler type that involves refinement in tuning, carbonation, etc. 1971 federal law requires all new cars to be equipped with evaporative devices which siphon off fumes from the carborators and gas tanks and recirculate the fumes back into the engines so they are not emitted into the atmosphere. Mr. Anderson estimated that 80% of Nevada vehicles are equipped with crankcase devices and 30-40% are now equipped with muffler or exhaust devices. He also noted that manufacturers had not elected to install catalytic devices on their new equipment; however, Mr. Guinn said this type may be the most likely one to control carbon dioxide and nitrogens. Mr. Guinn also stated some consideration is being given to an after-burner method by which oxides and nitrogens are exposed to extreme heat.

(Cont) * Attachment 6

MR. GUINN: There is one point I want to make about the maintenance of the equipped vehicles, keeping them on and hooked up in a mandatory periodic inspection system, where you are going to drive into the inspection station and have the devices checked. People who are going to want to operate without them are going to hook them up as they go in and are going to unhook them as they come out.

This is one of the reasons the spot-inspection program in California, which gets to about 15% of their vehicles, is a fairly effective device in that direction.

SENATOR WALKER: Who conducts that spot-check over there?

MR. GUINN: The State Highway Patrol...before the Department of Motor Vehicles will accept a registration a person has to have a certification by a certified station appointed by the highway patrol, that a devise is on and working. It does not say it has to be working efficiently. These are the areas where it is a tremendously complex problem.

MR. ERNEST GREGORY, State Health Department: In reference to S.B. 275, Sections 11 through 17, as proposed to establish a new state agency under the title of The State Board of Environmental Protection with specific responsibilities for the control of air pollution and charged to develop programs and legislation for the control of water and solid waste---The designation, Board of Environmental Protection, is misleading because the control of air and water pollution and solid waste is only a small part of a program to maintain or enhance man's environment. Consideration must be given to land use, fish and wildlife habitat, native and exotic vegetation, population distribution, housing, water resources and use, traffic patterns, public institutions, recreation and economics in relationship of these here in modern resources for the development of a comprehensive pollution control plan.

...Senate Concurrent Resolution No. 3 directing the legislative commission to consider the administration and organization of the environmental protection program of this state would indicate an awareness of the legislature for the consideration of factors other than air and water pollution is necessary for a state environmental protection program. A comprehensive program will result only from consideration of all factor in and related to man's environment and control or protection of those factors to minimize man's impact on his environment. The establishment of the proposed Board of Environmental Protection is a myopic approach to a large problem. The Board's duties and responsibilities should be extended to provide for consideration of all environmental factors where this disruptive interim action should be avoided and control programs remain within the existing agency until a comprehensive state environment protection program is developed...not to object to the whole bill but just to that particular section establishing a new board with no financial provisions for support, apparently...this leads to quite serious problems I do believe. If the proposed bill is favorably acted upon consideration should be given to Section 7: minimal education and experience requirement should be set forth for the control officer where it be designated that he be placed in the state personnel system and I believe this is proper and common in most positions such as this. Section 11.2, the board is charged with the responsibility to protect human health and safety, prevent injury to plant and animal life, and prevent damage to property.

(Cont.)

MR. GREGORY (Cont'd.)...Yet, there is no requirement for board members to have the necessary education or background, in the natural or physical sciences to enable them to assess effects of air pollution on man, plants, animals or property. A certain portion of the board should be composed of individuals trained in the sciences.

Section 11.4: My personal opinion is that the two-year appointments for board members is too short. Board members ordinarily do not become knowledgeable in programs, policies, practical and legal problems, to become effective board members in such a short time. This problem is more acute, in this instance, due to the lack of specific member qualifications in the proposed bill. Appointments should be for a minimum period of four years.

Section 11.7: This section establishes a dangerous policy and will contribute to the inter-department conflicts. If technical support and staff are necessary for the functioning of the air-pollution control agency, such assignments from other agencies should be made on order from the Governor and not left to board members. I'm quite serious about that one. If the bill is enacted it would enable the board to draw personnel from the Health Division, for example. At present we have one chemist working in the laboratory in Reno. This man is responsible for surveillance in the milk, meat, water-pollution control, air-pollution control, and water-supply programs, and the whole spectrum.

...Taking that man out of the Health Division, at this time, would cripple all of our other health programs, which apparently this board would be able to do. There are two positions and one isn't filled, so what you run into with this type of provision in the bill, is a question of priorities. It could be, the air-pollution control board or this protection board, come in and demand the services of chemists when they are needed in other areas...I think these are the onflicts and confusion you will run into with the provision in the statutes.

I think the Governor is usually aware of these man-power problems within the agency. I think he would have and should be given the authority to order transfer assignments of individuals from one program from one program to another---but, not to an independent outside board, which I think this is...I am opposed to a "new board" based on S.C.R. 3.

Section 12.1: Under the federal act, the state is the responsible agency for all air-pollution control activities within the state, including evaluation of local programs. The phrase, in this particular section, insofar as it pertains to state programs,is confusing and misleading. Two people in the local agencies and state agencies, it does nothing to the phrase to delete it but it will certainly improve working relationship between the state and local agencies.

Section 15.4: Terms of facilities should be clarified or included in the definitions...I think facilities should be defined as an air-pollution control devise, plant or something else. There are provisions in the bill by reference, but I think it should be spelled out.

(Cont.)

MR. GREGORY (Cont'd.): Section 29: Carson City should be included in addition to the county jurisdiction. The bill drafters were not aware Carson City is neither defined as a county nor a city. It's something else, and any reference to Carson City is included in the Western Nevada Air-Quality Control Region and as such should be defined in the statutes as an entity, subject to certain requirements under the provisions of this bill (S.B. 275.)

SENATOR YOUNG: This bill would provide the new board with water-pollution and solid waste disposal management authority too, I take it.

MR. GREGORY: Exactly.

SENATOR YOUNG: Do you think that's wise to broaden the scope to that extent?

MR. GREGORY: As a control agency, yes. But, there are provisions for planning. My experience over the past two years with the Tahoe Regional Planning Agency in developing, hopefully, the Council of Governments for a comprehensive environmental control plan for the Carson Basin, that's all it is, is a control agency and to actually develop a comprehensive water-pollution control plan involves consideration of land use, wildlife management, etc., just to protect water quality. I think that if a board such as this one is formed and charged with the responsibility of developing plans for water-pollution control, air-pollution control and solid waste plans without relating to any other agency that's doing the same type of planning, it would be a real sad mistake.

I think this is the problem at the federal level, today, they're misleading the people. If you walk through any agency, state or federal level, you'll find about 50 people...doing the same type of planning...I think the approach of the Governor's Environmental Council is the proper approach, it might not be the right one but it is certainly a step in the right direction of coordinating state agencies to think together and work as a team instead of independently.
(End of verbatim transcript)

MR. BILL HICKS: I represent the Nevada Agricultural-Livestock Council and I speak for the ranchers and farmers of Nevada, I hope,in respect to S.B. 15...we don't find a definition of solid waste, we're concerned about this. In Section 4 of the bill, we would like to see "ranch and farm" included after the word "household."
(End of verbatim transcript)

Hearings on Senate Bills 118, 275 and 15 were concluded and no action was taken at this time. There being no further business, the meeting was adjourned at 5:40 p.m.

Respectfully submitted,

Jacqueline Crane

Jacqueline Crane, Committee Secretary

TESTIMONY

SENATE BILL NO. 275 and ASSEMBLY BILL NO. 392

HERBERT M. JONES, Attorney for BASIC MANAGEMENT INC., Henderson, Nevada, and its members, TITANIUM METALS CORP. OF AMERICA, STAUFFER CHEMICAL COMPANY, KERR-MC GEE CHEMICAL CORP., and FLINTKOTE CO.

This witness has been authorized to appear before this Honorable Committee for the specific purpose of stating that Basic Management Inc. does not oppose Senate Bill No. 275 and Assembly Bill No. 392, however, they do respectfully request permission to make what Basic Management Inc. deems to be a few constructive suggestions for amendments to said Bills and it feels that might make the Bills more applicable to the Nevada environment and conditions.

1. Directing your attention to page 2 of Senate Bill No. 275, line 2 of Section 4, we would like to suggest that a comma be inserted after the word 'atmosphere', and the words "except water vapor and water droplets" be added thereto.

Basic Management Inc. feels that the atmospheric conditions in the State of Nevada lends itself completely to the rapid absorption of any moisture factor such as water vapor and water droplets and thereby does not create a problem that would be sufficiently beneficial to the statute to compensate for the problems that might be created by eliminating these words.

2. We would further like to suggest that Section 11-2 on page 2 of the Senate Bill No. 275 be amended as follows:

"The members are to possess demonstrated knowledge and interest in environmental matters. That said members shall be selected, one each from the following professions and industries: Law, Engineering Higher Education, Agriculture (Soil Conservation or Wild Life), Organized Labor, Medicine (and/or Public Health), Manufacturing (or Mining

Industry), Municipal Government, and one Lay person. Membership of the Board shall fairly reflect the population distribution of the State."

The foregoing suggestion is made upon the belief that it would be extremely difficult to ever get a Board constituted under the existing paragraph, and that there would be many individuals in the State of Nevada who would qualify with the above suggested prerequisites, and who would not only be interested in serving but who would endeavor to familiarize themselves with the subject in such a manner as to make the Nevada Environmental Law a credit to this State.

3. Referring to Section 22 (b), Basic Management Inc. would like to suggest that the following sub-section be inserted thereafter:

"(c) If the Board determines that no practical means is known or available for prevention, abatement or control of the air pollutant involved, a varience may be granted but said varience shall continue only until such means become known and available".

We make this suggestion that as the law in its present form would not allow any variance to be granted in spite of the fact that the State of the Art of that particular industry to a stage where there were any known solutions to the problem. The law apparently endeavored to take care of this problem by inserting a similar type paragraph under Section 24 (a) on page 8 from line 1 through 4, however, with this particular section being placed where it now is in the law there would never be any way for the varience to be obtained in the beginning, therefore, Section 24 (a) should be deleted and sub-section 22 (c) inserted as suggested above.

4. We would like to suggest that Section 25, sub-section 2, page 8 of said Senate Bill be amended to read as follows:

"Judicial review may be had of the granting or denial of a varience or any other alleged violation or breach of this statute, said judicial review to be conducted in accordance with the procedure

in any other contested case within appropriate jurisdiction".

The statute in its present printed form would limit the type of review which could be obtained before the courts of the State or the Federal jurisdiction and does appear to be too restrictive in its present form. It is interesting to note that the Federal law does not put any limitations upon the rights of an appellant appearing before the Board to ask for or receive judicial review but simply gives him the right to have judicial review in the event of controversy pertaining to the adjudication of the Board.

5. Referring to Section 27, page 8 of the aforesaid Senate Bill, we would like to suggest that sub-section 3 be added to Section 27 which would read as follows:

"At any hearing held under this Section, before the Board, it shall be one of the Boards rules of procedure that all witnesses testifying in regard to an alleged violation of the statute shall testify under oath, and the witness shall be subject to cross-examination by the parties to the hearing."

6. Referring to Section 35, sub-section 4, page 11 of the Senate Bill No. 275, we would like to suggest that this Section be amended to read as follows:

"A person who discloses and/or knowingly uses information by violation of this Section is guilty of a felony and shall be liable in tort for any damages which may result from such disclosure or use. Any conspirator or purchaser of said information shall also be liable in tort for any damages which may result from such disclosure or use by said conspirator or purchaser of said information".

The foregoing suggestion is made, as a misdemeanor with a six months sentence and a possible $500.00 fine might be deemed to be a minor punishment for the amount of money that could be obtained for some of the confidential information possessed by some industries pertaining to their own individual processes and procedures.

The individual who might disclose such information might also be judgment proof and yet sell such information to some individual who also should be liable in tort if they assisted in obtaining such information.

For those reasons, we ask that the above amendment be made to the statute.

7. Referring to Section 38, page 11 of said Senate Bill No. 275, we respectfully request that said Section be amended to read as follows:

"Except as provided in Section 40 of the Act, judicial review of all decisions of the Board when acting as a hearing Board or otherwise, shall be allowed upon proper petition being made for said judicial review. Any such judicial review shall be a trial de novo.

RESPECTFULLY SUBMITTED:

HERBERT M. JONES

TESTIMONY - S. B. 275 AND A. B. 392

W. H. WINN, GENERAL MANAGER
KENNECOTT COPPER CORPORATION
NEVADA MINES DIVISION
MCGILL, NEVADA

Perhaps, to provide a frame of reference for my testimony concerning this proposed legislation, I should begin by saying that, for several reasons, amendments to our present air pollution law are needed. With some changes, this bill could provide the needed amendments and with those changes, which I will review in detail in a moment, I would urge passage of the bill.

I should also make it clear that I fully understand that the will of our citizens of Nevada and of our entire country has been forcefully expressed concerning a requirement for clean air. I personally, together with my company, agree with this thinking and take the position that clean air will be a reality in a reasonable length of time. The 25% of the pollution produced by industry will be mostly eliminated within the timetable prescribed by federal regulation. The 75% produced by others is a more difficult area in which to forecast.

If I may, I will summarize the purpose of my remarks before I begin. As this committee considers proposed legislation concerning air pollution, it should approach the problem with a determination to achieve results which will assure protection of the air quality in Nevada. However, you gentlemen must be equally determined to achieve this with the smallest possible adverse impact on the industries

and local governments of the state. After the problem of clean air has been solved and perhaps forgotten, the legislature will still be facing the equally important problem of Nevada's narrow tax base. The only change will be that the need for revenue will be greater than it is now and more difficult to come by.

With this introduction, I should like to review possible changes to this bill as listed on the handout provided.

Section 2.2

This section is too broad as written and perhaps poorly worded. The expression "require the use of all available methods" applied universally could result in much more stringent regulations being applied than are actually needed. The wording "as may be necessary to achieve Section 2.1 above" should be added. This requires that regulations shall be applied for the purposes of the act, and not regulation for regulations' sake.

Section 4

A change would clarify the meaning. Water vapor and carbon dioxide are components of the atmosphere and are generally excluded from the classification of air contaminants. Water vapor is discharged from cooling towers, irrigated fields, etc., and carbon dioxide comes from people and animals and the combustion of carbonaceous fuels in power plants, automobiles, etc. Previous testimony has said that isolated local problems could occur such as fog across a highway. It was indicated that the designation as a pollutant should be retained for these isolated

cases but that these compounds would not generally be administered as pollutants. This approach is not possible. Anything described in this statute as a pollutant must be administered as one. A citizen who objected to the humidity emanating from irrigated fields could say that his esthetic senses were being violated, that water is a pollutant and demand in court that the board take action to prevent pollution. The board would be hard pressed to do other than treat the water as a pollutant. You cannot designate anything as a pollutant which you don't intend to have full administrative treatment as one. The problems which could arise from water and carbon dioxide should be handled by the nuisance law.

Section 11.2

I strongly object to this section. I realize its purpose is to deal with the allegation by various conservation groups and governmental agencies that some states have ineffective air control boards because they are predominantly made up of members of industry. This thinking is fallacious and abundant proof is available around us. There are innumerable members of industry on boards and commissions in Nevada, and the record will clearly show that they are conscientious toward their assignments and completely responsive to their duties of carrying out the wishes of the Legislature.

Be that as it may, this particular board cannot afford to be deprived of much of the expertise that is available in the field of air pollution control. I'm sure you are aware that almost everyone is on the "bandwagon" and can answer lots of

questions about air pollution. A close examination will show that what often exists is pseudo knowledge mixed with emotion. Such will not help this board. If it is to accomplish the extremely difficult job of complying with the responsibilities connected with the federal air pollution law, the board will need all of the real know-how it can possibly assemble.

As a minimum, I strongly recommend that there be provision for at least a minority of industry and local governments on the board.

Section 13.5

I suggest that wording be added to automatically adopt federal air quality standards. The purpose is to simplify administration of the law as the setting of air quality standards is always a tedious and rather painful process. Some people are never satisfied that the regulations are strict enough - whatever they are. Likewise, there are those that always think they are too strict. I believe if you will review the proposed federal standards you will find that they will well serve the purpose of providing clean air.

Section 13.12

I have proposed that two ideas be added to this section on emission controls. The first, which requires the highest practical emission limitations on new sources is properly compatible with federal regulations.

The second addition requires careful consideration before any emission control regulation for an existing source is exercised which reduces emission

more than necessary to achieve the adopted air quality standards. This type of limitation is extremely important to protect those being regulated from "overkill" which would result in a financial hardship being imposed. The proposed wording does not prohibit such regulation but requires careful consideration and balancing of benefits with costs. In this case, the first consideration is given to the source, as it should be. This proposed section will, in some small measure, help to replace the protective clause contained in the old statute (Section 445.525) and not replaced in this one.

Section 13.14

This section as written seems to prohibit everything and perhaps some wording has been left out. It can be clarified by adding the words "without the possession of a valid operating permit issued by the board."

Section 13.20

It is my feeling that this section should be eliminated altogether since it is extremely vague in definition. It would be next to impossible for administrators to fairly determine what is "unreasonable" and what is "undue." These powers are well covered under the sections describing the permit system.

Section 24.1 (b)

Wording is added here for clarification and insures that costs of operation of control devices or process be considered.

Section 39

I have assumed that the purpose of this section is to specifically provide that compliance with this air pollution statute does not prohibit individual suits for damages. I see no reason why this wording should be in an air quality law. I would recommend that it be omitted.

If it is retained, it should certainly contain the same modifying language contained in the federal air pollution law on citizen suits, which allows a suit to be filed only after 60 days notice to the board and to the alleged violator. Also, it is recommended that reference to collection of damages be eliminated. Again, this is an air pollution law and not intended to enter the area of damage collection which is covered in other statutes.

Section 40

The penalty section has a rather strict penalty to be applied to everyone. If applied to a small businessman or farmer, he could be financially ruined. Consideration should be given to reducing the penalty to meet the degree of violation. Also, there should be wording added to prohibit applying a penalty without notice of violation. If a penalty is to be corrective rather than punitive, such notice is necessary. Again borrowing wording from the federal law, "a notice of 30 days should be provided."

The changes which I have recommended to you will not hamper the board in carrying out the intent of the statute - to protect and improve the air quality of the

state. Neither will they cause any problem in compliance with the federal clean air act.

They will, however, constitute some measure of protection for those being regulated. It is a mark of good legislation that regulatory laws always contain this thought of protection. If left out, the law is weakened rather than strengthened because those regulated spend their energies trying to upset the law rather than in complying with it. The field represented by this law is particularly susceptible to pressure and action groups and, as a result, it becomes even more important that the Legislature clearly spell out its intent which I very much hope is the achievement of clean air with minimum impact on the industry and local governments of the state.

Thank you.

Submitted by W. H. Winn
March 9, 1971

General Manager
Nevada Mines Division
Kennecott Copper Corporation

PROPOSED AMENDMENTS TO S.B. 275

Proposed additions are indicated in italics and omissions are indicated by brackets.

Amend Section 2, subsection 2(a) to read as follows:

(a) Require the use of all available methods to prevent, reduce or control air pollution through the State of Nevada[:]; *as may be necessary to achieve Sec. 2.1 above.*

Amend Section 4 to read as follows:

Sec. 4. "Air contaminant" means any substance discharged into the atmosphere[.] *except vapor and carbon dioxide.*

Amend Section 11, subsection 2 to read as follows:

2. The members are to possess demonstrated knowledge and interest in environmental matters. [No officer,] *Not more than two officers,* [employee,] *employees,* major [stockholder,] *stockholders,* [consultant,] *consultants,* or counsel of any industry or *more than one member of* any political subdivision of this state shall be appointed a member of the board. Membership of the board shall fairly reflect the population distribution of the state.

Amend Section 13, subsection 5 to read as follows:

5. Establish air quality standards[.] *as required and adopt Federal air quality standards when provided.*

Amend Section 13, subsection 12 to read as follows:

12. Establish such emission control requirements as may be necessary to prevent, abate or control air pollution.

295

FED LAW LANGUAGE - sec 111(a) FED ACT

The state board shall require emission standards for each new source of air pollution. These standards shall reflect the degree of emission limitation achievable through the application of the best system of emission reduction which, taking into account the cost of achieving such reduction, the board determines has been adequately demonstrated.

The term "new source" means any stationary source, the construction or modification of which is commenced after the adoption of this statute.

sec 111(a) FED.

Emission control plans applied to an existing source shall be limited to those required to achieve established air quality standards. The board may consider application of emission standards beyond those required to attain established air quality standards only when

1) *To establish such emission standards will not produce a hardship without equal or greater benefit to the public.*
2) *In determining benefits, the board shall consider first the source involved and, second, the public.*

Amend Section 13, subsection 14 to read as follows:

14. Prohibit as specifically provided in sections 19 and 20 of this act and as generally provided in sections 2 to 40, inclusive, of this act, the installation, alteration or establishment of any equipment, device or other article capable of causing air pollution[.] *without possession of a valid operating permit issued by the board.*

Amend Section 13, subsection 20 to read as follows:

[20. Require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants.]

Amend Section 24, subsection 1(b) to read as follows:

(b) If the variance is granted because compliance with applicable regulations will require measures which, because of extent or *original* cost, *or operating cost*, must be spread over a period of time, the variance shall be granted only for the requisite period as determined by the board, and shall specify the time when the successive steps are to be taken.

Amend Section 39 to read as follows:

Sec. 39. Nothing in sections 2 to 38, inclusive, of this act, shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any persons to [damages or other] relief [on account of injury to persons or property] and to maintain any action or other appropriate proceeding therefore in the courts of this state or the courts of the United States on a tort claim against the United States or a federal agency as authorized by federal statutes[.] *except that civil action shall not begin until 60 days after notice has been given to the board and to the alleged violator as to the nature of the violation.*

Amend Section 40, subsection 1 to read as follows:

Sec. 40. 1. Any person who violates, *after 30 days notice from the board of the nature of a violation*, any provision of section 2 to 40, inclusive, of this act, or any rule or regulation in force pursuant thereto, other than section 35 on confidential information, is guilty of a civil offense and shall pay an administrative fine levied by the board of not more than $10,000. Each day of violation constitutes a separate offense.

Following are listed the seven specific kinds of legislative authority that will be needed by state air pollution control agencies to meet the requirements of the Federal Clean Air Act, requested by William D. Ruckelshous in a letter to all state governors. Below each is listed the covering Nevada statute or regulation.

1) Adopt emission standards and limitations and any other measures necessary (e.g., limitations on the sulfur content of fuels) for attainment and maintenance of national ambient air quality standards.

Statute 445.445 (a)
Statute 445.455

2) Enforce without delay applicable laws, regulations, and standards, with appropriate sanctions including authority to seek injunctive relief.

Statute 445.540 through 445.570

3) Abate pollution emissions on an emergency basis to prevent substantial endangerment to public health; i.e., authority comparable to that available to the Environmental Protection Agency under Section 303 of the Clean Air Act, as amended.

Regulation XX

4) Establish and operate a statewide system under which permits would be required for the construction and operation of new stationary sources of air pollution and the construction and operation of modifications to existing sources. Also required is authority to prevent such construction, modification, or operation, and any other necessary land use control authority.

Regulation II

5) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources.

Regulation III

6) Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources: also, authority to make such data available to the public as reported and as correlated with any applicable emission standards.

Regulation XI

7) Carry out a program of inspection and testing of motor vehicles to enforce compliance with applicable emission standards when necessary and practicable, and other authority necessary to control transportation.

Regulation XIX

This statute authorizes the board to establish regulations as may be necessary to enable the state to comply with all requirements of the Federal Clean Air Act.

Submitted by W. Howard Gray 3-9-71

PROPOSED AMENDMENT NO. 1 TO S.B. 275

S. B. 275 Should be Amended by Adding to the Proposed Enactment the Following:

In adopting rules and regulations and passing on variances, the board shall take into consideration all of the facts and circumstances bearing upon the reasonableness of the emission of air contaminants involved, including but not limited to:

1. The character and degree of injury to or interference with health and property or the reasonable use and enjoyment of property or conduct of business;

2. The social and economic value of the source of air contaminants;

3. The technical practicability and economic reasonableness of reducing or eliminating the emission of air contaminants from such source;

4. The location involved, the density of population, the atmospheric condition, and the relationship of the emissions to the general air pollution conditions of the area;

5. The cost and effectiveness of control equipment available; and

6. Efforts previously made and the equipment previously installed to control or decrease such emissions.

PROPOSED AMENDMENT NO. 2 TO S.B. 275

Subsection 5 of Section 40 Should be Amended to Read as Follows:

5. Any person aggrieved by an order, *regulation or ruling granting or denying a variance* issued pursuant to this *Act* [Section] is entitled to the [review] provisions of the Nevada Administrative Procedure Act (N.R.S., Ch. 233B)

Section 14 of the proposed act provides that in the adoption of rules and regulations pursuant to subsection 1 of Section 13, the board shall comply with the provisions of the Nevada Administrative Procedure Act (Ch. 233B of N.R.S)

Also in subsection 1 of Section 17 of the proposed act, it is proposed that the hearing board should be governed by the Nevada Administrative Procedure Act (Ch. 233B of N.R.S.)

Again, in subsection 5 of Section 40 of the proposed act, the proposed act would provide that any person aggrieved by any order issued under the provisions of Section 40 of the proposed act would be entitled to the review provisions of the Nevada Administrative Procedure Act (N.R.S., Ch. 233B)

It is submitted that by making the suggested change in subsection 5 of Section 40, it would be unnecessary to make references to the Nevada Administrative Procedure Act as are made in Section 14 and Section 17, subsection 1, and in subsection 5 of Section 40, since the one section as above proposed would suffice so far as the Administrative Procedure Act is concerned.

PROPOSED AMENDMENT NO. 3 to S.B. 275

Subsection 2 of Section 25 provides that:

"2. Judicial review may be had of the granting or denial of a variance as in other contested cases, but denial may be reversed in a court only if such denial was arbitrary or capricious."

It is submitted that this subsection (subsection 2 of Section 25) should be amended so that it should read as follows:

2. Judicial review may be had of the granting or denial of a variance as in other contested cases, but denial may be reversed by the court only if such denial was arbitrary or capricious *or was not supported by substantial evidence.*

* * *

PROPOSED AMENDMENT NO. 4 to S.B. 275

It is proposed that the following should be added to S.B. 275:

1. Any person aggrieved by a decision of a hearing board may at any time within thirty days after the filing of a decision petition the district court in and for the county involved in such decision, or where such person resides or does business, for review of the hearing board's decision. The review shall be by a trial de novo.

2. Any hearing had in a district court pursuant to subsection 1 shall take precedence over all other matters in the court, with the exception of criminal matters.

PROPOSED AMENDMENT NO. 5 TO S.B. 275

There is some unnecessary repetition in the proposed act which makes the reading of the act difficult. For example, subparagraphs 3,4, 5 and 6 of paragraph (a) of subsection 1 of Section 19 is a repetition of the principal subject matter of subsection 13 of Section 13.

It is suggested that the matter duplicated should be removed from one or the other of the two places, viz., paragraph (a) of subsection 1 of Section 19 or subsection 13 of Section 13.

* * *

PROPOSED AMENDMENT NO. 6 TO S.B. 275

We find in various places the words "due notice" and "public Hearing" (subsection 1 of Section 22, subsection 3 of Section 23, and also subsection 2 of Section 22, subsection 2 of Section 23)

The most important is what is "due notice."

Much of the confusion would be eradicated by adopting proposed Amendment No. 2 which would place all of the proceedings by the board under the provisions of the Administrative Procedure Act, Section N.R.S. 233B.060.

Again, what is meant by a "public hearing" is of some doubt. Is it merely a meeting of the citizenry involved or interested where they can express their views, or is it a

hearing whereby the information is provided for the board through sworn testimony subject to cross examination?

It is submitted that the definition of "public hearing" should be to the effect that at the hearing the board would receive information by sworn testimony under formal procedure with the customary right of cross examination.

PREPARED FOR PRESENTATION BEFORE SENATE COMMITTEE ON ECOLOGY
MARCH 9, 1971

My name is Robert F. Guinn, and I am appearing today principally on behalf of the members of the Nevada Motor Transport Association. I also represent the Franchised Auto Dealers of Nevada. My testimony should not be construed as representing opposition to enactment of enabling legislation adequate to conform to the requirements of the 1970 Clean Air Act, nor to attemptsto develop controls required to achieve acceptable air quality standards in Nevada. We believe, however, that there are several features of S. B. 275 which are objectionable or unworkable. While we have reservations about a number of the bill's provision, we will - in general - confine our comments to those directly affecting the operations of motor vehicles.

Our specific objections are as follows:

(1) In common with other industry representatives, we believe the language of Subsection 2 of Section 11, concerning qualifications of the environmental protection board, which specifically precludes industry representation, is both unwise and unfair. And we join with other representatives of industry in asking your consideration for modifications to remove this inequity.

One suggestion has been made that the statute specifically provide for industry representation. We would subscribe to this.

Or you might want to consider a board composition patterned after that of California. Section 39020 of the California Health and Safety Code reads as follows:

There is in state government the State Air Resources Board. The board shall consist of 14 members, nine of whom shall be appointed by the governor with the consent of the Senate. The governor shall consider demonstrated interest and proven ability in the field of air pollution as well as the needs of the general public, industry, agriculture, and other related interests, in making appointments to the board. The Director of Public Health, Director of Motor Vehicles, Director of Agriculture, Commissioner of the State Highway Patrol and Director of Conservation shall serve as members of the board. The governor shall appoint the Chairman from one of the nine appointees who shall serve as chairman at the pleasure of the governor.

Should this latter suggestion appeal to you it would most certainly meet with the approval of the interests I represent. There would, as you undoubtedly realize, be a requirement for certain substitutions as to heads of governmental agencies to be included in the makeup of the board and the number of other appointees need not be thesame.

(2) We believe Subsection 19 of Section 13 should be deleted. This section permits the board to require installation of exhaust control devices on motor vehicles. This would apparently permit the board to require retrofitting of motor vehicles with pollution control devices beyond that with which they were originally fitted new. This is a formidable undertaking, and one that even the

State of California has found impossible to implement, except in a limited manner. There is no such requirement in the Federal law.

Presently available vehicle pollution control devices suitable for retrofitting are limited to those affecting crankcase emissions. Inasmuch as crankcase emission devices have been required by Federal action since 1963, the improvements in air quality possible by retrofitting vehicles older than that with crankcase emission controls, when compared to the cost and relative effectiveness, is highly questionable.

It should also be noted that since 1963 there have been additional requirements imposed by the Federal Government, so that each year model may have something new. For example, Federal vehicle emission limitations adopted after 1963, governing output of carbon monoxide, hydrocarbons, and oxides of nitrogen, have forced major modifications in engine design, including advanced spark, higher operating temperatures, more delicate carburator adjustments, etc. And 1971 model year vehicles must have evaporative control devices to prevent gasoline fumes from escaping into the atmosphere. So far, no acceptable devices are available to upgrade vehicles not originally equipped with these additional features. There will be other step changes during the next several years.

We strongly recommend that if you believe it is essential to move in the direction of retrofitting of motor vehicles with pollution control devices that you do so by direct legislative action. The California law, requiring certification of such devices by an appropriate state agency, and their installation only

on transfer of ownership, would be one possible approach. But this will require a comprehensive administrative system to provide for the appointment of inspection stations and certification of personnel to make necessary inspections. I do not see how this can be accomplished through administrative edict. Should you desire to consider this alternative we would be glad to submit suggested language.

(3) Subsection 1 of Section 28 reads as follows:

> To the extent such regulation is not prohibited by Federal law, the board may by regulation provide for control of emissions of air contaminants from internal combustion engines, both stationary or otherwise, on the ground or in the air, including but not limited to aircraft, motor vehicles, snowmobiles, and emissions from railroad locomotives.

Federal law provides that states, excepting California, may not impose vehicle emission standards in certain fields other than those adopted by Federal action. But this provision does not extend to all areas. For example, starting with January 1, 1970, manufacturers of diesel-powered vehicles were required by Federal regulation to control visible exhaust emission to 20 percent opacity at approximately sea level. There is no stipulation concerning what a state can do or not do in that field. Last year, on two occasions, one at the state level and the other at local level, proposals were made to impose visible smoke emissions more stringent than those required of the manufacturers who supply our equipment. We believe that standards for emissions for mobile equipment and motor vehicles,

which must cross varying political subdivision lines, should be consistent with Federal requirements and that they must be uniform throughout the state. For this reason we suggest adding a new sentence to subparagraph 1 of Section 28 to read as follows:

> Such regulations shall be consistent with Federal standards for vehicle emission controls and with respect to motor vehicles and special mobile equipment, shall be uniform throughout the state.

If you adopt this suggestion there should be added to the bill definitions of motor vehicles and special mobile equipment as defined in NRS 484.081 and NRS 484.173, or reference should be made to these sections.

We have one other observation about the language in Subsection 1 in Section 28 and we believe the committee should be fully cognizant of its implications. We believe the drafters of this language have in mind extending to the state and county boards the authority to impose compulsory inspection of motor vehicle emission control devices. Now, if this is so, we believe the members of the Legislature, and the public, have a right to know this. Criticism has been made of those speaking in opposition to some of the broad terms of this bill for not being specific in their suggestions for change. This is, in our opinion, a two-way street, and I think this committee has an obligation to have those advocating this language put on the record just what they have in mind and if they are planning an inspection system how they would implement it, what it would consist of, and how much it would cost.

Let me say that the State of California has been studying this problem for a number of years, and as critical as the situation has been there, they have not yet seen fit to order a mandatory inspection system, mainly because of the fantastic administrative problems involved and the staggering cost to the public when measured against the possible benefits in reduced pollution from motor vehicles which might accrue.

In 1970, the California Legislature commissioned a research firm to study and report on the problem. That report is due in July, 1971. I have obtained enough copies of a recent staff report on the study, and a recent interim report by the firm making it to distribute to the committee. If you find time to review it, you will find that these documents raise far more questions than they answer.

Implementation of any type of meaningful inspection system would require the institution of officially certified inspection stations and personnel. It will involve financing to cover administrative costs, which could take the form of an annual fee on each inspection station. Such a program would have to specify what the inspection should consist of. Certainly a testing procedure which would check only to see if required devices were hooked up would be worthless, because this would not determine whether they were working properly. Furthermore, there is not available at this time equipment suitable for use on a mass basis to determine the actual output of some of the more critical emissions. A proper inspection would, and this is touched on in the California reports handed you, require checking on engine compression, spark settings, timing, carburator

adjustments, idling, engine termperature, and so on.

In other words, any meaningful inspection program, which would actually assure an efficiently running engine, involves a complete engine tune up. If this is done we are talking about costs, for each inspection, of not less than $30.00 for a minor tune up, and as much as $75.00 for a major one. So that the annual cost to the motorist will be in excess of $10 million dollars. This point on engine tune ups is made in the California report handed you.

Let me emphasize, again, that I believe this committee has an obligation to require the sponsors of S.B. 275 to put on the record what they intend the language of subsection 1 to cover, and if it does include an inspection system, that they spell out the details and the costs involved. In this respect, I want to point out that should an inspection system be instituted, then the franchised auto dealers I represent would be among the few firms currently equipped to make meaningful tests and adjustments, so that such a requirement would be to their financial advantage. But I want the record to show that they are not among those sponsoring this provision, and they want to make this emphatically clear to all concerned.

We believe Subsection 2 of Section 28 should be deleted. This section permits the board to establish visible emission standards for motor vehicles, and would then force each city and county to adopt local ordinances imposing those same limitations. The obvious intent of this language would be to require every city and every county to enforce violations of visible emission standards under local police powers, citing violators into local courts in the same manner

as is done with ordinary traffic violations.

The present standards of the Board of Health, which became effective last December, prohibit any visible emission from gasoline-powered vehicles and set varying ranges of smoke opacity or Ringelmann readings for diesel-powered equipment, depending on the date of manufacture and elevation above sea level. The enforcement of visible emission standards of diesel-powered vehicles in motion is done by comparing the smoke emissions with charts, indicating various shading in printing or with film strips of varying density. It is a judgment situation, where the observer endeavors to compare the density of the smoke with his chart or film strip. The use of such methods requires trained personnel, because the method in which the observation is made can cause wide variations in readings. For this reason we question the wisdom of permitting every local police officer to become involved in issuing visible smoke citations unless that is, the cities and counties are willing and able to provide for training personnel in this field. The City of Las Vegas has recently considered adopting specific visible smoke standards and rejected the idea. We can also see the possibility, should each city and county have visible smoke ordinances, of an operator having a vehicle malfunction after he left his base of operations and then receive numerous citations as he crossed into each different political subdivision.

Visible smoke from motor vehicles is more of an offense to sight and smell than it is to health. The emissions that really hurt you are those you cannot see. This is especially true of smoke from diesel-powered vehicles, which while

admittedly offensive, contains no carbon monoxide, and far less carbo-hydrons than does the invisible emission from gasoline-powered vehicles. The emissions of oxides of nitrogen are about the same as those of gasoline-powered vehicles.

With respect to smoke emissions of gasoline-powered vehicles, while such emissions indicate a malfunctioning engine, and thus a greater discharge of the harmful pollutants than from a perfectly functioning engine, the increase is by no means a great one. In this respect you should keep in mind that it is not going to be you and me who are going to be cited for smoke from ordinary motor vehicles, but the people at the lower end of the economic scale. I think you should consider carefully whether you want to confront these people with a requirement for a substantial bill for overhauling their motors to eliminate any discharge of visible smoke, and at the same time, to require that they be subjected to a fine in a local court.

We believe there is much to be said for the present system which permits an offender to be cited for violation of a vehicle smoke emission standard, and to then submit, within a reasonable period of time, evidence that the vehicle had been repaired, without undergoing a penalty.

At the present time enforcement of visible smoke limitations is confined to officers of state and local air pollution agencies. This probably does not provide for adequate enforcement. One possible remedy would be to extend the authority for enforcing such standards to the State Highway Patrol and motor carrier field agents. But we believe forcing the counties and cities into this

field would be unwise, and that all of Subsection 3 of Section 13 should be deleted, Subsection 1 containing adequate authority to set visible emission standards. Should you desire to consider legislation giving the Highway Patrol and motor carrier field agents added authority in this field, we would be glad to submit suggested language.

Subsection 3 of Section 13 provides that should any vehicle emission control devices required by Subsection 1 be removed or made inoperative or be not properly maintained, the registration of the vehicle shall be cancelled and not renewed until requirements for pollution control equipment have been met. This is indeed a harsh .. and we believe .. an unworkable provision. Only the Department of Motor Vehicles can cancel a registration. And when a registration has been cancelled, it must then be reissued. This would involve heavy costs to both the Department and affected individuals. Implementation of this requirement, again, would require some sort of inspection program.

We notice from certain newspaper accounts that persons protesting the broad provisions of this bill have been challenged because they have failed to recommend specific changes to overcome their objections. We believe that both Subsections 2 and 3 of Section 28 should be deleted, and that Subsection 1 should include language precluding the board from instituting an inspection system by administrative edict. We also suggest in a positive vein, that if this committee believes the state should move forward into the field of inspection of motor vehicles for emission control purposes then you should accept the responsibility at the legislative level and not delegate unlimited authority to an administrative

board. In other words, you should draft legislation to delegate to some existing state agency, perhaps the Department of Motor Vehicles, the authority to establish inspection stations and prescribe standards for equipment and personnel. You should spell out in the law precisely what inspections are to be made, and you should provide for the financing of administrative costs, either through direct appropriation or by setting in the law the licensing fees which are to be applied. That law should also spell out the penalties to be imposed for violation, either by an authorized station or its personnel, or a motor vehicle owner and not leave this to the whim of an administrative board.

There are some "middle of the road" steps that can be taken. For example, the State of California requires that before a vehicle can be registered by a new owner he must submit to the Department of Motor Vehicles a certificate, issued by an official inspection station, that the emission control devices required by law are installed and working. In this respect there currently is no requirement that the actual efficiency of the devices be certified to .

The California law also has a provision permitting any peace officer to cite a vehicle owner for failure to have required emission control device installed. In such cases the owner is permitted to drive the vehicle to a place of repair at a certified station and must produce evidence within a specified time that the repairs have been accomplished. Here again, however, as with any inspection program, there will be a need for inspection stations and certified personnel.

Should you consider moving in the direction of a legislature ordered inspection system, we would be glad to submit suggestions for appropriate legislative language.

We also wish to express our apprehension over the provisions of Section 40, which grants to the board the right to levy administrative fines up to $10,000 a day - and to set a system of fines up to $500 for undefined "minor violations". Let me remind the committee that this is a major departure in this state, and to the best of my knowledge, such power has only been delegated by the legislature in the control of gambling, held by the courts of this state to be in a special category. The members of our industry, in every aspect of their daily operations, are governed by the provisions of administrative law. So they know from first-hand experience the far reaching consequences of this proposal. We earnestly suggest that you carefully consider the wisdom of permitting this. We note from the testimony of Mr. Calkins of the Federal Environmental Protection Agency that the current law, which makes each day's offense a separate misdemeanor, is judged inadequate. Perhaps we have missed something, but our review of the provisions of the 1970 Act fails to reveal any grounds for this statement.

Our final comment on S. B. 275 involves the issue that other representatives of industry have mentioned. That is the failure to include what the sponsors of S. B. 275 have denounced as "industry's bill of rights" in the present law. This is the provision set forth in 455.525 which imposes certain guidelines which the board must follow in making its rules and regulations. Among these are the

character and degree of interference with health and property; the social and economic value of the source of air contaminants; the technical practicability and economic reasonableness of reducing or eliminating the emission of air contaminants; the location, population, atmospheric condition and relations of the emissions to the general air pollution conditions; the cost and effectiveness of control equipment available; and efforts previously made and equipment previously installed to control or decrease emissions.

~~Let me point out to the members of this committee that the word~~ GUINN ~~"reasonable" does not appear one single time~~ in ~~this bill~~. The board, subject to the limited restraints of Section 38, has an unrestrained hand in carrying out the broad authority set forth in this bill. If it is the intent of the sponsors that the rules and regulations need not be reasonable, need not recognize technical and economic feasibility, then in all fairness they should have it say as much. Suppose it were amended to read specifically that the rules and regulations did not have to be reasonable, that they did not have to take into consideration the character and degree of injury of health. Suppose it were amended to read that the board did not have to consider the social and economic value of any source of air contaminants, so that without restraint they could decide to eliminate an industry even though there might be a need to achieve a balance between some degree of air contamination and the preservation of industry and jobs. Suppose it said that the board should ignore the technical and economic feasibility of eliminating air contaminants in making their decisions. I am sure that were such language incorporated in the bill few,, if any members of this legislative body, would support it. But the deliberate failure to include it, and the resistance being

exerted by its drafters to prevent the inclusion of any standards whatsoever to guide the board's decisions is, in my opinion, tantamount to having them admit that they do not believe the board should be restrained by such considerations. On behalf of almost a thousand heavy duty truck operators in this state, and their employees, I appeal to this committee to insert into S. B. 275 the provisions appearing in 445.525 of the present law.

Submitted by Robert Guinn
March 9, 1971

State of California

AIR RESOURCES BOARD

February 17, 1971

STAFF REPORT

ACCREDITATION PROSPECTS AND LEGAL ASPECT OF USED CAR EMISSIONS

A. Accreditation Prospects

As reported to the Board at its last meeting there are at the present time no accredited devices for used cars and no applications pending. The Norris-APC device lost its accreditation through the withdrawal of Norris Industries and Ford Motor Company has withdrawn its application. The technological possibilities for used car controls include:

1. Re-accreditation of the APC device if a new manufacturing and distributing partner is forthcoming. The device would then be required on not less than 75% of 1955 through 1965 model vehicles at time of transfer of ownership.

2. If APC is not successful in obtaining re-accreditation, the Board could reconsider the emission control packages offered by several American manufacturers last year. These systems basically included a modification of the vacuum advance system and modified idle adjustments and basic spark timing. Compliance with the used car standards would be marginal the highly dependent on the idle adjustments. In actual application to used vehicles it is probably unrealistic to expect the idle adjustments to be maintained any better than they are on 1966 and later models, i.e., very poorly. Some driveability and fuel economy adverse effects are also to be expected and the Board's criteria concerning adverse effects might have to be modified to permit accreditation.

B. Legal Aspects of Used Car Emissions

The effectiveness of used car control programs is influenced importantly by the degree of control achieved by a device and rate of installation of the device on the used car population. It is also influenced importantly by variations in use rate with age. Table I lists two sets of data showing annual mileage as a function of age.

Table I

Age at end of year	Miles per year (1,000's) (a)	(b)
1	14.5	13.2
2	12.7	12.0
3	11.2	11.0
4	9.6	9.6
5	8.4	9.4
6	7.0	8.7
7	5.3	8.6
8	5.0	8.1
9	4.4	7.3
10	4.2	7.0
11	4.0	5.7
12	3.7	4.9
13	3.7	4.3
14	3.5	4.3
15	3.5	4.3

(a) ARB-CHP sample, 1566 vehicles, 1970.

(b) Kramer & Cernansky, "Motor Vehicle Emission Rates", NAPCA, April, 1970.

Possible changes in statutes to aid in a program to reduce pollutants from motor vehicle engines are:

1. Require tune-up adjustments when the California Highway Patrol finds and cites excessive pollutant emitters in all model vehicles.

   Some vehicles have unusually high emissions of pollutants because they are not properly maintained and adjusted. The adjustments involved would probably include timing, carburetion, and spark plugs. A rough estimate is that of all the cars on the road, 10-20 percent of them have excessive pollutant emissions due to maladjustments; the CHP estimates 15 percent of the cars on the road could be checked by it each year. Thus only 1.5 to 3 percent of the cars on the road would be required to make adjustments under this program. The reduction in total emissions would be small, but some of the high emitters would be identified and corrected. Regulations for engine tune-ups are already authorized for 1966 & later model year cars (Vehicle Code Section 27157; AB 1-1970).

2. The standards for accreditation of used vehicles could be left up to the Board.

   Only one exhaust device has been able to meet the standards required by Health and Safety Code Section 39107, which are:

   350 ppm HC
   2% CO
   800 ppm NO_x

   or any two of the three if the other emission is not increased. The Board could be given the discretion to certify devices with lesser results, provided the $65 limit for cost and installation (Section 39180(a)) is met. It is likely that the lesser results could be achieved by relatively inexpensive devices. On the other hand, less effective devices would not produce much emissions reductions.

   Also, under present legislation there is no positive program for devices other than those for crankcase and exhaust emissions of hydrocarbon, carbon monoxide and oxides of nitrogen.

3. A substantial reduction in hydrocarbons and carbon monoxide could be achieved by low emission adjustments on all vehicles, both pre- and post-1966. This would be accompanied by a smaller increase in nitrogen oxides. While idle adjustment is not, strictly speaking, a control device, it has by usage come to be defined as an integral part of almost all the control systems now on the road and of those discussed above. The benefits of a simple idle adjustment program are being studied in the Northrop contract.

4. Annual certification of devices can be required of all post-1962 model year light duty vehicles, and all prior model years after a device is certified for them. Presently the law requires certification only upon transfer of ownership (Vehicle Code Section 24007(b)). An annual certification would permit regular adjustment of cars equipped with control systems.

   The Northrop study should indicate the cost and benefits of this approach.

5. Should a device for 1955-65 light duty vehicles be certified, it could be made applicable on a schedule that would permit more rapid installation of such a device than the schedule provided under the present law.

6. For 1966 through 1970 models it is possible to achieve on the order of a 40% reduction in NO_x emissions by a relatively simple vacuum advance mechanism disconnect procedure, with or without a temperature over-ride attachment. A moderate reduction in

hydrocarbons would also be accomplished, although part of the benefit would be lost through increased exhaust gas flow rates. A fuel penalty of approximately 5 to 10% would be incurred ($15 to $30 per year for the average motorist). The laws for used car device accreditation currently apply to only pre-1966 vehicles.

7. Section 39180(c) which is in conflict with 39107 could be repealed. It requires used vehicle devices to equal the performance of new vehicle devices or to have an expected life of 50,000 miles.

8. Amend Health and Safety Code 39129 (c), (f) and (i) to require crankcase on all vehicles, 1955-1962, without waiting for transfer of ownership, throughout the State, not just in the ten counties.

   This item is included only as a possibility. Because over 90% of the cars are now equipped with control systems for crankcase emission, these amendments would have little effect on total crankcase emissions.

9. Amend Health and Safety Code 3129 (d), (f) and (i) to require exhaust devices an all 1966-1968 vehicles, not just those in the ten counties.

   Again, this is mentioned as a possibility only. As 95% of the cars in the State are in the ten counties, this amendment also would have little effect on the program.

INTERIM REPORT ON THE AIR RESOURCES BOARD PROGRAMS FOR THE "VEHICLE EMISSION INSPECTION AND MAINTENANCE STUDY"

James Norman - Northrop Corporation

320

Submitted by Robert Guinn
March 9, 1971

February 17, 1971

Mr. Chairman, Members of the Board, Ladies and Gentlemen; my name is Jim Norman and I am the Northrop Program Manager for the Vehicle Emission Inspection and Maintenance Study. I welcome the opportunity to give the first progress report to the Air Resources Board on this program. Much interest in this program is being evidenced by the number of inquiries received from government agencies as well as industry including automotive, petroleum and instrumentation sectors.

As this program was structured to obtain specific vehicle emission information in "real-world" circumstances, with the goal of reducing California air pollution, it might be well to review the program elements and objectives.

The overall objective of the program is to examine all facets of the feasibility of implementing a California periodic vehicle inspection and maintenance program through a comprehensive testing and study effort. The final study results will be submitted to this Board on 1 June 1971 so that you may subsequently submit your recommendations to the Legislature.

Although elements of the Test Phase (Part B) and the Study Phase (Part A) are proceeding in parallel, the vehicle Test Phase is the data input portion to the Study Phase. The 1320 vehicles in the program are representative of the California car population by make, model, engine size, carburetion, transmission, etc., as randomly selected by a computer from the Department of Motor Vehicle records. The selection of test vehicles is being performed for us by the Reuben H. Donnelley Co., one of the two companies authorized access to DMV records.

Mailings are then sent to the randomly selected prospective private-owner participants with a pamphlet explaining the California program, an ARB letter requesting participation, and a return post card. Telephone calls are made to both persons requesting participation and non-respondents to further encourage both cooperative and disinterested persons to furnish test vehicles.

The actual test program itself has been conceived to obtain sufficient test data for technical, economic, personnel requirements, and training trade-offs for the total testing spectrum. To cover this spectrum, we are performing four test regimes: the certificate of compliance test, which is the "smog inspection test" at Class A stations and similar to California Highway Patrol roadside inspections; the "idle" test, done while the car is idling, with emission measuring instruments, but not requiring a dynamometer; the Clayton Key-Mode test which requires a dynamometer and emission instruments with the vehicle operated at idle, low, and high cruise; and the full diagnostic test which is the most comprehensive, requiring a skilled diagnostician, a dynamometer, and instrumentation.

Our associate contractor in the Test Phase is Olson Laboratories, Inc., who has broad experience, both locally and nationally, in vehicle testing. The test facility system and calibration gases were satisfactorily compared to the Air Resources Board system and gases for overall test correlation.

Much controversy has been generated, not only as to the pros and cons of any periodic emission testing and maintenance program, but also as to the value of the simpler compliance and idle test modes versus the more complex Clayton Key-Mode and full diagnostic tests. The methodology of this program as specified by the ARB will do much to resolve these questions.

The total test fleet is divided into four parts with one quarter of the vehicles to each test - compliance, idle, key-mode, and diagnostics. Each car receives a standard 7-mode hot-start test upon receipt at the test facility which provides the baseline test information on HC, CO and NO_x emissions.

By using random block selection and an assignment algorithm all vehicles are put into a test mode and later, if they fail, are sent to garages selected by the random method. Emission limits, set by the ARB for all test modes, were adjusted as required following the 120-car pilot testing phase.

Each car, depending on the test mode to which it was assigned, received that specific test at the test facility immediately following the first 7-mode hot-start test. If the car was within limits, the car was returned to the owner. If the car failed the individual test mode, it was sent to a repair facility as randomly assigned.

Some comments about the repair facilities are pertinent at this point. We have 25 repair facilities involved; the idle, key-mode and diagnostic test modes have six repair facilities each and the certificate of compliance mode has seven facilities. These include franchise dealers, independent garages, gas stations, and diagnostic centers; each type of repair facility having representation in each test mode. All participating garages have Class A licenses.

Prior to the start of the pilot phase, a meeting with the involved repair organizations was held at the test facility, for each of the test regimes, for indoctrination purposes and to answer questions. The repair organizations were not given specialized training, as the purpose of the program is to truly reflect the effectiveness of repairs on vehicle emission reduction and the attendant costs. Northrop and Olson had the Clayton Manufacturing Company as a consultant in the meeting with the key-mode repair group and the Automotive Evaluation Center as a consultant with the diagnostic mode repair organizations. ARB representatives were present at all meetings to clarify procedural and policy questions.

Rather than go into great detail about each test mode and its procedures, I will make a generalization and an oversimplification for the repair and adjustment procedures for all four tests. Except for setting the timing, idle speed, and air/fuel ratio to manufacturers' specifications, no adjustments or repairs were to be made if not deemed necessary to reduce emissions.

Again, I emphasize the importance of this program in assessing the ability of typical repair facilities to adjust and repair for emission reduction only, as well as determining the associated cost. Previous programs have attempted to gather similar information but used small vehicle samples, in laboratory-like conditions, with technician-type personnel rather than real-world mechanics. 322

Any vehicle sent out for adjustment or repair is retested at the test facility, using its assigned test mode and 7-mode hot-start test, upon return. If it does not pass, it is returned to the repair facility for further work and is then retested again upon its return. After passing its first retest, or after second retest if necessary, the vehic receives a final 7-mode hot-start test and is returned to the owner.

Approximately one-half of the vehicles will be uncontrolled with no exhaust emission controls while the remainder will be controlled vehicles with exhaust emission control systems. One-half of the total vehicle sample from all four test modes will be retested in 6 months to determine the effect of additional mileage and time on the test vehicle and to provide data for a regression analysis.

Data from the vehicle test program will be continuously flowing into the study program data bank for computer storage and analysis. Comparisons of the vehicle emission reductions for each test mode, with the attendant non-recurring and recurring costs, plus the following program elements will be considered in the feasibility study phase.

The feasibility study has numerous important elements that must be addressed for a candidate test system such as: analysis of instrumentation available to meet 1975 and 1980 standards; the scope, extent, and frequency of inspections; state vs. privately-operated inspection station trade-offs; all of the various economic elements; program administration and enforcement; station placement and configuration; personnel acquisition and training; emission reductions and other potential benefits to owners; as well as acceptance by the public and special interest groups of periodic vehicle emission inspection and maintenance. An important part of the program will be a public opinion survey to determine the willingness of the public to invest time and money in a meaningful program. The survey results will be furnished to the Air Resources Board and the Legislature.

The Interagency Review Committee, with representatives from the ARB, CHP and Division of Highways, met in December 1970 and January 1971 for their monthly review and has directed only minor changes to the program. They have authorized Northrop to proceed with the 1200-car sample after reviewing the results of the 120-car pilot program and the Learning Phase Report.

Some typical comments of the Interagency Review Committee were: adjust the idle test cut-off limits for more equitable rejection between cars with air pumps versus engine modification; do not provide garages with check-off forms as this might cause repairs to be not representative of what the average person would get when having his car repaired; the 7-mode hot-start test will be performed after each repair action; Northrop should contact car donors to determine their satisfaction or dissatisfaction after emission reduction repairs.

Both the contractor and your Air Resources Board staff have exercised extreme care in not stating or indicating any preliminary judgements or conclusions as to test mode or modes showing favorable emission reductions and/or cost trends from the pilot program.

The pilot program and the resulting Learning Phase Final Report, submitted on 22 January 1971, with its detailed emission and cost data, were completed ahead of schedule. The Instrument Report on Equipment and Manufacturers was submitted on 1 February 1971. This pilot phase has enabled the ARB and the Northrop team to establish firm pass/fail emission limits for the main 1200-vehicle program. An additional fallout of the program will be idle test emission data which will assist the California Highway Patrol in setting initial limits for the roadside emission idle testing program to be initiated in 1971.

A unique part of this ARB program is the measurement of the oxides of nitrogen in conjunction with hydrocarbons and carbon monoxide to assess the "before and after" effects of vehicle adjustment and repair on NO_x emissions. These tests will provide the first sizeable data bank on the interrelationship of NO_x with HC and CO when adjusting for minimum emission levels.

The main 1200 vehicle test program and the parallel study effort are on schedule and as no major difficulties are envisioned, we expect the program to be completed on time with specific recommendations. Minor problems in the logistics of vehicle procurement, loan car/test car pick-up and delivery, repair facility scheduling, etc. are foreseen but are not considered holding factors.

Thank you for this opportunity to make this interim report on one of your most important programs.

an
AUTO INSPECTION and MAINTENANCE STUDY

As required by California laws, automobile manufacturers have been installing air pollution control systems on cars beginning with 1963 models. The Air Resources Board is sponsoring a study of the feasibility, costs, and benefits of a vehicle emissions inspection program. This study will include the testing of vehicles by Northrop Corporation in Anaheim, to determine the benefits that would result from an inspection program in California. The success of this effort will depend largely upon public participation.

PROGRAM DESCRIPTION

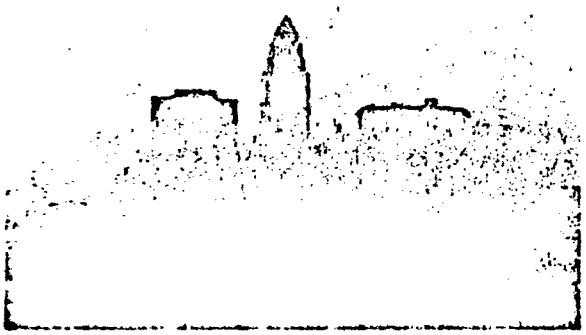
To obtain information about the performance of the vehicle pollution control systems, a large number of cars will be tested. Several hundred vehicles will be randomly selected from cars volunteered by their owners within the cities of interest. Owners will be fully protected against all possible liabilities and all vehicles will be fully insured by the testing contractor. To compensate for any inconvenience which the program might cause the owners, each participant will be provided with a late model loan car when required.

Vehicles will be brought to the centrally located test facility at Northrop for exhaust emissions inspection. Each vehicle will stay at the facility for 2 to 8 hours, depending upon scheduling. The complete exhaust emissions inspection is accomplished within 20 minutes, although additional time may be required for adjustments and/or repairs. All work will be accomplished at no cost to the car owner.

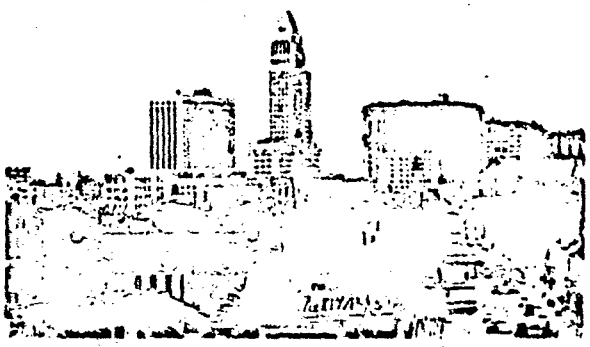
The program will evaluate four different kinds of tests. In each test, a small sample of exhaust gas is continuously extracted from the tailpipe. The sample is analyzed by an exhaust gas analysis system for pollutants such as hydrocarbons (unburned gasoline), carbon monoxide, and nitric oxide. A digital computer is coupled to the analysis system and instantaneously calculates and averages the percentages of each pollutant present in the exhaust. The final result of each test will be combined with additional data to aid in establishing acceptable levels of exhaust emissions.

Upon completion of this initial testing phase, each vehicle will be returned to its owner. Some vehicles will require retesting 6 months later. Retesting will provide information about performance of the air pollution control system as the car ages and is subjected to normal usage.

AIR POLLUTION ... a nationwide problem



Smog is trapped by a temperature inversion at approximately 300 feet above the ground. The upper portion of the Los Angeles City Hall is visible in the clear air above the base of the temperature inversion. The inversion is present over the Los Angeles Basin approximately 320 days of the year.



The Los Angeles City Hall during a clear day in 1956.

Photos by
the Los Angeles County Air Pollution Control District

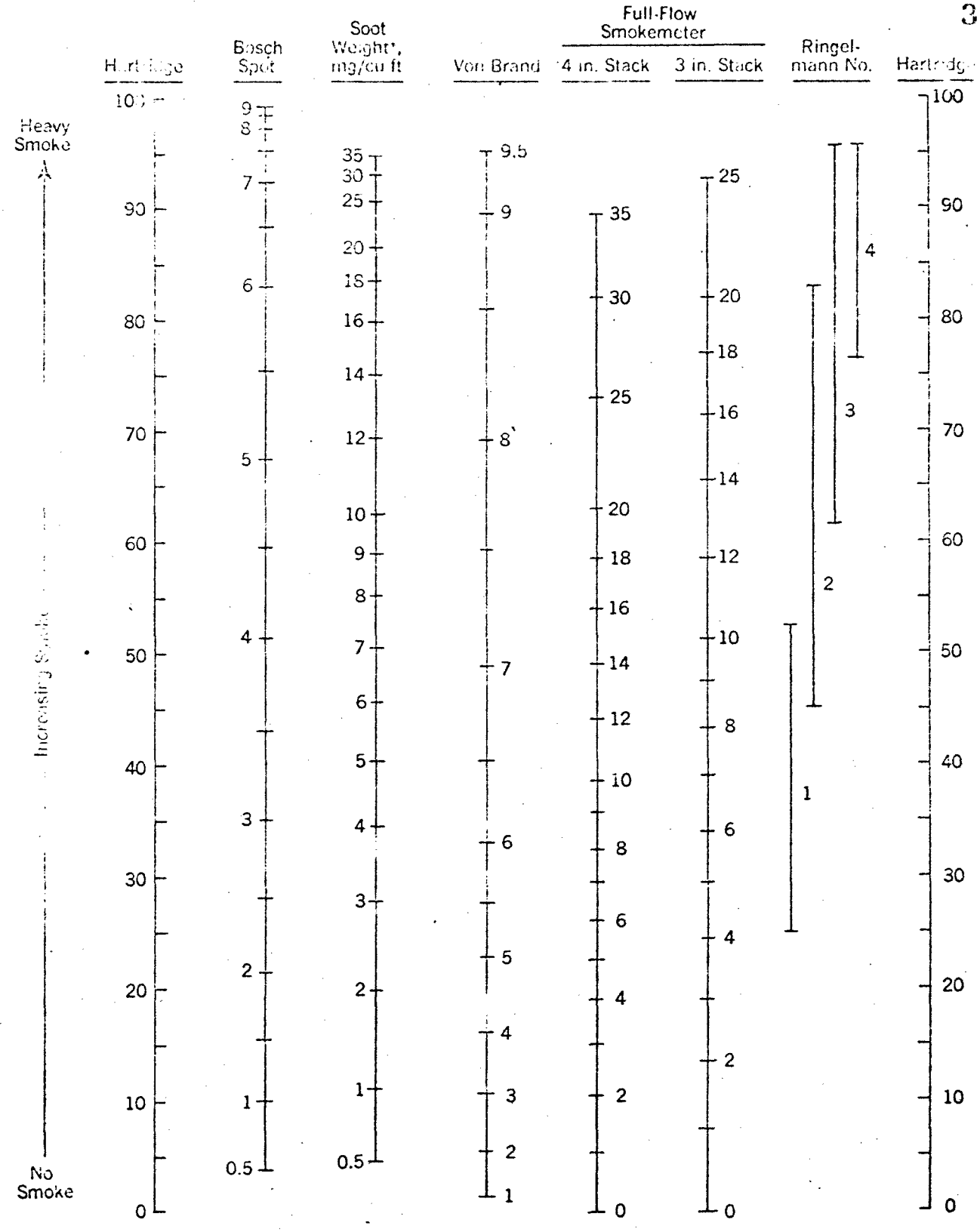
Air pollution is a serious problem that should be of concern to all citizens. The major sources of air pollution are exhaust from gasoline-powered vehicles, industrial combustion of fuels such as coal and fuel oil, disposal of municipal refuse and solid wastes, evaporation of solvents, and gases from industrial processes. Air pollution control experts claim that the gasoline engine is a major source of contaminants that enter our atmosphere. Automobiles in the United States produce hundreds of thousands of tons of carbon monoxide and tens of thousands of tons of unburned gasoline and oxides of nitrogen every day.

California, through the efforts of the Air Resources Board, continues to lead the way in the nation's fight against smog. In 1961, crankcase emission control devices were installed on most new cars sold in California. Since 1964, it has been required that used cars be certified for correct operation of the crankcase control devices upon change of ownership. Exhaust emission devices have been required on vehicles sold new in California since 1966. In addition, more stringent regulations, beginning with 1970 models, required installation of evaporative emission devices.

PROGRAM OBJECTIVE

Tests of vehicles equipped with emission control devices have shown that exhaust emissions increase with mileage and with time in service. These increases may be due to the deterioration of the control systems, to engine malfunctions, or to some combination of the two. Engine malfunctions may also cause increased emissions from vehicles not equipped with emission control systems.

The objectives of the program to be conducted by Northrop are to determine the effect of proper maintenance on exhaust emission levels and to determine the costs and overall feasibility of establishing a network of testing stations for periodic exhaust emission inspections.



*Includes measurements by analytical methods and Robert Bosch light-dispersion smokemeter.

FIGURE 11
General Correlation of Smokemeter Measurements
(Based on published results and Ethyl tests)

GARY DESCH.

Mr. Chairman, Members of the Committee,

Section 1.3-1.4, which is "Findings and Purposes of Federal Clean Air Act," states "that prevention and control of air pollution at its source is the primary responsibility of States and local governments and "that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional and local programs to prevent and control air pollution."

In order to obtain this financial assistance Nevada must establish a state board of environmental protection (provided for in SB 275) for the purposes of carrying out the measures stated in the Clean Air Act and its amendments.

The government will make grants to air pollution control agencies in an amount up to 2/3 of the cost of developing, establishing or improving programs for the prevention and control of air pollution. The 1970 amendment to the Clean Air Act provides for 125 million dollars for the states for the 1971 fiscal year, 225 million for 1972 and 300 million for 1973. In order for Nevada to receive its share of this money, SB 275 must be made law.

For too long have individual rights been overlooked for the economic gains brought to the state of Nevada by industry. There are too many examples of exploitation of natural resources, personal property, and public health by those people who take advantage of Nevada's present attitudes toward industry and industrial pollution.

It is important for the Nevada State Legislature to realize that air pollution is a growing priority, perhaps more important than the encouragement of industrial growth in this state. Is it reasonable to invite industry by claiming lax pollution standards at the risk of endangering the lives and welfare of the citizens and the ecology? Perhaps, if this were so, industry could take Nevada over completely, because no one else would want it. Let industries relocate, let them take their business and money elsewhere, if other states will let them. We must not sacrifice our natural resources for a larger budget or widened tax base. Besides, our biggest industry, tourism, depends largely on Nevada's resources.

The fines and restriction imposed by SB275 on those who are intent on disregarding Federal and State air pollution standards are necessary. The bill allows time limits for installation of abatement equipment which can be met if industry makes an effort. If the pollutors do not try, they should pay for the damage they may inflict.

We urge the approval and passage of the air pollution control law in its entirity, and that no concessions be made to those who wish for less strong laws that will make things easier for them, and in the end, affect each of us adversely.

Washoe County Students to Oppose Pollution

THE ANACONDA COMPANY

Box 1000—Weed Heights, Nevada
89443

PUBLIC HEARING ON S.B. 275

AIR POLLUTION CONTROL LAW

March 9, 1971

Mr. Chairman and Members of the Board:

I am Jerry Houck, Assistant General Manager of The Anaconda Mine at Weed Heights, Nevada. Our company recognizes the necessity of enacting legislation that will enable the State to comply with the Federal Act. We believe that both the environmental and economical interest of this State will be best served by State enforcement of air quality regulations.

Section 11, Paragraph 2, of this proposed Bill specifies that anyone associated with or employed by industry or government is automatically denied membership on the proposed Board of Environmental Protection. There is ample talk of improvement of the environment of the state and nation but industry and government have conducted the research and development to provide methods and equipment to get the job done.

If this Board is to be composed of people who possess "demonstrated knowledge and interest in environmental matters," it seems unrealistic to prohibit membership to representatives of industry and government. The Governor should be free to appoint the most able people available without

any predetermined restrictions.

Section 40 of this proposed Bill, imposing a fine of $10,000 for a violation and $10,000 each day of continued violation, should be reconsidered. Except for the provision of Paragraph 2 referring to "lesser violations," there is no classification of violations. From a practical viewpoint, it seems necessary to allow the offender time to correct the condition causing contamination. This allowance should include the time required to purchase or construct the facilities needed to comply with regulations.

C. J. HOUCK

KERR-McGEE CHEMICAL CORP.
POST OFFICE BOX 55 • HENDERSON, NEVADA 89015

331

March 8, 1971

State Senator John P. Foley
Nevada State Legislature
Carson City, Nevada 89701

Re: AB-392 and SB-275 - Air Pollution Control

Dear Senator Foley:

I attended the hearing in Las Vegas on Friday, March 5, and would like to submit the following comments for your consideration. I think Section 11, Subsection 2, in restricting the composition of the board would make it difficult to get the best talent available to the state for this service. In my opinion, the board should be made up of a wide cross section of talent, along the general lines recommended in the attached letter from Basic Management, Inc., on the subject.

I cite the functioning of the Clark County Air Pollution Hearing Board in the past year. This board has as its members two attorneys, an engineer, a meteorologist, and a dentist. I believe I have attended a majority of its hearings, and I say with complete sincerity that I believe this board has zealously guarded the interests of the public at large while, at the same time, being wise in the actions which they have taken with regard to industrial air pollution. For example, the time limits which they have granted for variances have often not been as much as industry had requested, yet they were acceptable and not unreasonable. My point is that a board composed of a talent cross section such as this one and such as represented by the BMI letter will, I am convinced, act in a sound manner to protect the environment and the public which it is charged to protect but still keep itself free of emotionalism which tends to interfere with sound judgment.

I also feel that in some way provision should be made for an independent review of board actions. As I read the present bills, the board, in essence, fulfills all three functions of government: legislative, executive, and judicial.

I might point out that there have been no court actions resulting from the Clark County Air Pollution Hearing board, and I feel that this is attributable to the sound judgment and careful action of the members of this board. I believe that a composition along the lines recommended by BMI would achieve similar good results.

Very truly yours,

Henry S. Curtis

Henry S. Curtis
Plant Manager

HSC:jc