

Name of Organization: Nevada Board of Agriculture  
Date and Time of Meeting: December 8, 2009  
December 9, 2009  
Place of Meeting: Nevada Department of Agriculture  
405 S. 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: (775) 353-3601

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Minutes

December 9, 2009

**1. Call to order by Chairman Alan Perazzo**

- A. Pledge of Allegiance
- B. Introduction of Board members and guests.

Board Members Present:

Paul Anderson  
Dean Baker  
Ramona Morrison  
Paul Noe  
Alan Perazzo  
Martin Plaskett  
Jim Snyder  
Boyd Spratling  
Dave Stix, Jr.  
Hank Vogler

Board Members Absent:

Dave Barton

Staff Members Present:

Tony Lesperance  
Sandie Foley  
Katie Armstrong  
Phil LaRussa  
Bill Striejewske  
Annette Rink  
Shannon Rudolph

Guests:

Marta Agee, Sparks  
Mike Ingham, Chevron  
Marlene Lockhard, NPMA  
Peter Kruegr, I 3 Public Affairs, NPMA  
John Walsh, Afton  
Laura Ruiz, Afton  
Seth Jackson, Afton

John Cabaniss, AIAM  
Nick Economides, Chevron  
Randy Tackett, Champion Chevrolet  
Nancy Long, Jones Vargas  
John Sande III, Jones Vargas  
Alfredo Alonzo, Lewis & Roca  
J. J. Goicoechea, Nevada Cattlemen's  
Meghan Brown, Nevada Cattlemen's  
Wayne Frediani, NV. Franchised Auto Dir  
Timothy Hay, Reno  
Robert Tekniepe, Air Quality, Clark Co.  
Randy White, DAQEM, Clark County  
Don Alt, Nevada Livestock

## **2. Board Business**

### **I. Information on Truckee Canal and water in Lahonton Valley.**

Chairman Perazzo passed out two information publications regarding water for the Board and public to review.

- The Truckee Canal: Water for a Sustainable Future
- Layperson's Guide to Nevada Water

## **8. Petroleum Technology Bureau**

### **A. Presentation and discussion of scientific data and decision concerning the 38<sup>th</sup> Parallel.**

### **B. Request to go to workshop and hearing to adopt as permanent, proposed changes to NAC 590.065, pursuant to Item A.**

Bill Striewske: As you know there are a number of people behind me that are going to like to speak this morning and so on a couple of the issues of most interest, what I would like to do is summarize and hopefully clarify for the Board members those issues as well as I can. I also provided maybe a daunting amount of information in your Board packet, but I felt it was important that you get as much of that as you can. Then I am going to, with your blessing, allow various members of the public to speak as opposed to me trying to approximate their words for them

The first issue today is presentation and discussion of scientific data and the decision concerning the 38th Parallel. Because ever since this spring, when we dealt with this, we have quite a few new Board members. I've been asked to one last time go through a brief chronology of events of the past several years as they related to the issue of the 38<sup>th</sup> Parallel.

Those would be as follows:

In the calendar year 2004, the Board of Agriculture was approached by in-state fuel distributors represented by the Nevada Petroleum Marketers and Convenience Store Association (NPMCA) with the question on the existing differentiation of winter fuel volatility standards at the 38<sup>th</sup> parallel. The advantage of having a single year round standard is that fuel from Salt Lake City and northern California could be shipped into southern California, excluding Clark County, to handle fuel shortage periods.

Regulatory change would not affect the petroleum standards within the entirety of County as the County is under a State implementation plan for air and fuel quality standards. The only areas affected by the potential regulatory change would be Beatty, and the Pahrump-Armagosa Valley, and Lincoln County areas. Staff looked at the technical aspect of existing winter fuel qualities standards below the 38<sup>th</sup> parallel and found no technical reason why the fuel volatility standard used in northern Nevada could not be applied in Southern Nevada during the cooler winter months; September through March. An issue is whether the introduction of slightly more volatile fuel in southern Nevada would adversely affect vehicle drivability and performance. The proposed amended winter fuel volatility standard would be the same standard that has been in effect in Southern Utah. Regulation change was proposed to the Board of Agriculture and after not receiving any adverse public comments to the new regulation, the Board of Agriculture adopted the amendment to NAC 590.065 on May 7, 2004. The amended regulation allows for the use of slightly more volatile fuels in Southern Nevada during the winter months excluding that sold in Clark County.

After adoption of the regulation, the Western States Petroleum Association and the American Automobile Manufacturers Association (AAMA) voiced opposition to the regulation indicating that the Board of Agriculture did not use science as a basis for the regulatory change. In response to the opposition by Western State Petroleum Association (WSPA) and AAMA, meetings were conducted to determine means to address the concerns of those organizations. Five organizations; WSPA, AAMA, Nevada Department of Agriculture, the Nevada Department of Energy, and the Nevada Petroleum Marketers and Convenience Store Association (NPMCA) combined resources to commission the Desert Research Institute to conduct a third party review into the technical issues and to provide a report on their findings.

The draft report from DRI was released in 2006 and did not provide new information on the subject that had not been previously disclosed and reviewed by the Board. The report concluded that bringing more volatile fuels into southern Nevada during the winter months could lead to a high probability or likelihood of vehicles drivability problems. However, the draft report could not discern if there was a corresponding increase being reported or confirmed vehicle problems in the past year and a half under the new regulation.

Over the past several years, there have been several separate hearings in opposition to the new regulation in front of the Board of Agriculture with both WSPA and AAMA requesting rescission of this regulation. The draft DRI report was reviewed at the December 5, 2006,

Board of Agriculture meeting in Las Vegas and the content of the draft report and the argument brought forth by WSPA and AAMA did not prove persuasive to a single member of the Board of Agriculture to rescind the regulation.

At the December, 2007, Board meeting, presentations were made by WSPA as well as by the Western Petroleum Marketers Association and a request was made to go workshops and hearings on NAC 590.065 to comply with changes and the motion was carried.

At the March, 2009, Board meeting, it was decided that previously as I've stated, at the December, 2007 meeting, the request to return to workshops and hearings approved by the Board, but had not yet been completed. It was agreed that workshops were to be held after the conclusion of the ongoing legislative session. Two workshops have since been held in August in Sparks and November in Las Vegas. At the August workshop, representatives of WSPA and ASTM made a presentation arguing for the reinstatement of the 38<sup>th</sup> parallel. I provided some information, my lab analyses since the time the State went to one volatility schedule. There were no further presentations of data at the November workshop.

I would like to respectively summarize these two presentations. I've included both of them in your Board packet and I've spoken to Mike Ingham from WSPA and if he feels that I haven't clearly or accurately represented part of their presentation, that certainly he can correct or emphasize that.

As a summary of the WSPA presentation from the August workshop, it was felt that allowing fuels blended for the north which is climatically cooler than the south exposes consumers to increased risk of vapor lock and hot fuel handling issues. WSPA, AAM, and the AIAM all recommended to return to ASTM's specifications. They feel that SB 324 (which was also included in your Board packets), they feel that the section on adopting regs based on sound scientific evidence is relevant to reinstating the 38<sup>th</sup> parallel. And they provided some information on the ASTM volatility specifications. They were originally developed in 1970 by the Coordinating Research Council (CRC), a research arm of ASTM and revised since that time. Volatility class assignments were based on temperature data and the U. S. Army Doner Report and from the Doner Report average monthly temperatures in Reno and Las Vegas as observed from the 90<sup>th</sup> percentile did differ by at least 10 degrees over any month of the year; as much as 17 or 18 degrees in the summer.

A 2006 study by DRI looked at more recent and more extensive data and was in agreement with the Doner report. The parameter "T V/L= 20" has been determined by CRC to be the single best property to control vapor lock problems in older engines and hot fuel problems in modern fuel engines. T V/L=20 has been adjusted over time as a result of continuous CRC testing which assigns demerits for a variety of drivability problems under didn't conditions in fuel, such as hard starting, rough idling, stalling, etc., etc.

ASTM volatility specifications are designed to protect engines from vapor lock and hot fuel problems. Depending on the month, fuel in the south at northern specs are 6 – 11 degrees Fahrenheit below what the ASTM specifications call for. These differences become even more extreme for gasoline that contains 10% ethanol. Finally, their presentation stated that

evaporative volatile emissions were on the rise. There are increased drivability problems and that this affects Clark County as well as Esmeralda, Nye, Mineral, and Lincoln County.

The summary of the presentation, the information that I provided, obviously the Bureau does not have the resources that WSPA and ASTM have. I attempted to primarily work with available information and data from the lab. I will provide counter comments made during my presentation.

Contrary to Nevada, Utah has only one volatility class, they do not support the 38<sup>th</sup> parallel. And the cities of Caliente, Cedar City and St. George temperatures were compared to show the variations in climate and elevation that can occur in small geographic areas. The response to ASTM was that point by point city comparisons aren't as valid as compared over a larger geographic zone. And I will say that I have since looked at the cities and locations used in Utah from the Doner Report and there is a much more narrow temperature from say Ogden to St. George or Dugway at any given month. It is tighter than it is between say Reno and Las Vegas.

I showed information on the number of complaints received by the Department for fuels since the State went to a single volatility class and noted that there wasn't a significant increase during the hottest months of the year from the south. This was criticized as not being evidence. I mentioned statements about T V/L = 20 from both the DRI report and a recent CRC Hot Field Handling Study. ASTM adjustments to T V/L=20 have made a statement in the DRI report no long relevant and CRC statements on problems with our study and lack of demerits has resulted in some changes in the ASTM gasoline specification.

Finally, I showed monthly vapor pressure data from the County south of the 38<sup>th</sup> parallel to show that with very few exceptions, fewer than five, the vapor pressure of the fuel still conforms to the specifications set by ASTM for south of the parallel.

As I said, there were no further presentations or evidence given at the November meeting and so, I think at this time, if it's fine with the Board, I think some of the public would like to comment.

Mike Ingham, Western States Petroleum Association (WSPA):

Bill did a fine job of characterizing the presentation that WSPA made at the workshop back in August.

The only comment I would make about Bill's remarks is that the most important thing that he told you this morning has to do with looking at historical temperature data for Utah. And finding as ASTM found, there is a much smaller temperature difference between Northern and Southern Utah than there is between Northern and Southern Nevada. That's the whole reason that ASTM recommends one single set of specifications for the State of Utah where they recommend two the State of Nevada. And that has been a topic of discussion

multiple times when I've come before the Board. Why is it that Utah can have one spec and while we have to have two? And that's the biggest reason.

WSPA is a non-profit trade organization, representing 27 companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other products in Nevada and 5 other Western States, with the member companies supply more than 90% of the gasoline consumed in Nevada.

Many of you are new to the Board, so I would like to begin with a bit of a background on the issue. The ASTM is the consensus standards setting organization that develops the transportation fuel specifications used by most states to make sure that consumers receive a quality fuel product suitable for its intended use.

Nevada adheres to ASTM specifications for diesel fuel, jet fuel, ethanol, and bio-diesel to just name a few, but chose to take a significant departure from ASTM's gasoline specifications back in 2004. ASTM relies upon two types of scientific evidence in setting the gasoline specifications that it recommends for individual states. The first of these is historical temperature data available for each state. For Nevada, that historical data showed that regardless of the month, there is a significant temperature difference between the northern and southern parts of the state. We use Reno and Las Vegas as representative of the north and south; the average temperature difference is on the order of 15 degrees. On the basis of this significant temperature difference that exists throughout the year, ASTM recommends different gasoline volatility specifications for the cooler northern part of the state than it does for the warmer south. The dividing line being the 38<sup>th</sup> parallel or 38 degrees latitude.

The historical data used today, ASTM and its choice of the 38<sup>th</sup> parallel as the appropriate dividing line between north and south, was confirmed at a 2006 study performed by the Desert Research Institute (DRI) here in Reno. Their study of 30 years of extensive temperature data available for Nevada from the Western Regional Planning. The other type of scientific evidence used by ASTM in setting gasoline specifications is rigorous research studies involving the testing of many different models of vehicles on a variety of vehicles blended to achieve different combinations of volatility properties. These test programs are run at different ambient temperatures and at different altitudes in order to determine the effects of the gasoline volatility properties on vehicle drivability; vapor lock, hesitation, stalling, hard starting at different temperatures and at different altitudes.

In 2004, the Board approved a change in the gasoline specifications that apply to the area of Nevada lying south of the 38 parallel. Basically, this change applies to specification ASTM recommends for the cooler area north of the 38 parallel for the entire state. WSPA and the automobile industry have been consistently opposed to this rule change. We have do so on the grounds that it is not in the best interest of consumers living south of the 38 parallel. To be exposed to gasolines blended and intended to use in the cooler north which the CRC data show will basically increase drivability problems in their vehicles. We have asked repeatedly to see whatever technical analysis was presented to the Board in 2004 to persuade them that this change was appropriate based upon available scientific evidence.

Nothing has been forthcoming and frankly at this point, we are forced to conclude that no such technical analysis was ever offered to the Board. In any case, in 2007, the Nevada Legislature passed and the Governor signed into law SB 324 which requires the Board of Agriculture to adopt by regulation, specifications for motor vehicle fuel based upon scientific evidence. In the December, 2008 meeting, the Board directed Department staff to conduct workshop to determine whether in fact there is scientific evidence to support the change made in 2004. Two workshops were conducted this year; one in August in Reno and one November in Las Vegas.

WSPA made a presentation laying out in detail the scientific evidence used by the ASTM which I have gone over in summary, in developing the gasoline specifications it recommends for northern and southern Nevada. That presentation is part of the Board package that members received from me this meeting.

Performance of the rule change adopted by the Board in 2004 did not offer any scientific evidence at either workshop to support the rule change. In addition, it is clear that SB324 requires scientific evidence to be used by the Board in adopting specifications. It did not say "nor can it be applied that perceived lack of evidence problems justify the continuation of the inappropriate, technically unsupportable specification". Moreover, we understand that performance of the rule change may attempt to convince you that SB 324 was never meant to retroactive to the 38<sup>th</sup> parallel rule change. We believe that this also an inaccurate and understand that the AG's office and the Legislature are in agreement.

There seems to be only one appropriate course of action for the Board to take and that is to rescind the 2004 rule change and reinstatement specifications ASTM recommends for the area of Nevada south of the 38<sup>th</sup> parallel.

Dave Stix, Jr.: Bill, what prompted this change?

Bill Striejewski: Representatives of the Petroleum Marketers Association felt that the southern part of the state would be at risk of fuel shortages if there was a supply problem. This would eased by allowing fuel in from north of the 38 parallel.

Dave Stix, Jr.: At the time that this was enacted, was there or was there not, laws that allowed in case there was an emergency?

Bill Striejewski: To my knowledge at that time, there was not.

Dave Stix, Jr.: Is there one now?

Bill Striejewski: Yes.

Dean Baker: I think that we need to view the scientific part and if the scientific part is elevation and temperature, but if it's going to be the scientific part, you better hit every elevation and every temperature of every service station that gets the fuel. That's a whole different scientific thing particularly when you look at Lincoln County and the way it is. The

top part of it, to put it below – it looks to me that you either go to the 37<sup>th</sup> parallel or just say Clark County.

I can't see any reason to say that that 38<sup>th</sup> parallel is practical to me from a scientific point, but particularly from a monetary point. If you put the 38<sup>th</sup> parallel in and you tell me you're not supposed to deal with the money, Pioche and Caliente, and Panaca have to pay at least 10 cents a gallon or more for fuel than they did and yet Pioche is higher than a lot of places. It doesn't make any scientific sense to me to say they have to pay 10 cents a gallon more for fuel there for no other reason.

Peter Krueger, Nevada Petroleum Marketers Association (NPMA):

I am the guy, Mr. Stix, who came to this Board back in 2004 on behalf of my association and asked for this change in the volatility standard. For all the time and money and heartache that this has caused this Board, I apologize for. But, you heard from Marlene on behalf of the association, talking about a couple of issues. And I wanted to re-emphasize briefly what happened.

The reason we came to the Board was a case of possible and quite often by real-world standards, fuel shortages primarily in Lincoln County. What happens is that under the old rule, where we had the volatility standard based on the 38 parallel, fuel could only be supplied to those stations in Lincoln County from Las Vegas. Frequently, I'll say within depending on the year, depending on the circumstance, there were fuel outages. The other issue is that there are fuel suppliers that are north of the 38 parallel. Ely is a good example of that. You do not have rights, if you will, to draw out of Las Vegas. Yet, they supply stations south of the 38 parallel. Redistributing is one such an example out of Ely. Redistributing with a Shell jobber. They supplied several stations south of the 38<sup>th</sup> parallel with Shell products. They are not, by agreement with Shell, permitted to draw on a routine basis out of Las Vegas. Therefore, for years, they had to bring in fuel and their typical supply comes from Salt Lake. Obviously Salt Lake is much closer to Ely and therefore when you cannot, by contract, be permitted to draw from the Las Vegas market on routine basis, they had but no choice but service that market.

Other suppliers, both in and out of the state, I am aware out of Arizona and Southern Utah supply the same geographical area in north and south of the 38<sup>th</sup> parallel. They have the same situation. When fuel is short, they have to move quickly and demonstratively to get that fuel coming because a station out of fuel doesn't do the motoring public any good and the commercial interest in those surrounding areas.

Let me address this variance procedure. SB 324 did in fact require the Board to adopt a variance procedure. We participated in those decisions. This variance procedure as adopted will not work. The reason it won't work is that when a fuel shortage occurs, it could occur four days in a row. Let me draw the Board back to the period of time we're talking about. For approximately nine months of the year, the volatility standard in Nevada is the same. North, south, east and west. It's identical – nine pounds vapor pressure. It's only

this period of time from October to February, that very short period of time, where the north and the south previous to the Board's decision in '04, was significantly different.

The Board voted again to make it the same with the exception of Clark County because they have their own fuel requirements. A variance procedure, while it sounds good, and obviously the opposition, the people trying to get this reinstated, saw that significant move to try to use as evidence to have the Board..... The petroleum marketers have a variance now and they ought to be happy. We believe that the frequency of requests to this Department would be staggering. The number of calls, the number of adversaries, when a fuel shortage occurs. Now this isn't only the pipeline is disrupted into Las Vegas. This could be simply when a particular grade of gasoline is not available in that terminal. We just do not believe that the prepared variance procedure, while well meaning, is useful or practical. It will not work in the real world that we talk about.

Exceptions to ASTMs are common place. I think the other side wants you to believe that no one has exceptions to ASTM standards. That's just not true.

The last thing I want to say is that a lot has been said about scientific evidence and retroactivity of SB 324. As Ms. Lockhard talked about, there is no, to our knowledge, the Attorney General's office including your representative has not stated that this provision requiring the Board to relook at its decision of '04, is retroactive. We believe that is not true. I think to imply otherwise, is incorrect. I don't believe that your representative from the AGs office ever stated that.

As far as scientific evidence, we do not have the resources to do original science, however, we do look at the same reports that Mr. Ingham and others have demonstrated. The CRC studies that were done in Phoenix where the conclusion was there was, not enough demerits to demonstrate that there are drivability standards with hot start, hot fuel, hesitation and that kind of thing with using this type of fuel.

Marlene Lockhard, Nevada Petroleum Marketers Association: SB 324 is clear. You have a copy in your packet and at the end of the bill you will see effective October, 2007. That is the effective date of that legislation. I spoke with the Keith Munro, the Assistant Attorney General for the State of Nevada, legislation is not retroactive. It's prospective. So Board action that you take going forward must be based on scientific data. It doesn't mean you have to go back and undo and revisit every decision this Board has ever made however many years ago. SB 324 also required you to adopt variance procedures as has been stated, you've done that. It required you to go to public workshop and hearing. You have done that in August and November and reported by your staff. There has been a tremendous amount of public hearings on this issue. The Board has fully complied with SB 324.

Paul Anderson: I guess we need a clarification because what you're saying Marlene is contrary to what Mike Ingham said. Mike implied that the Attorney General's office felt that what we're doing here has to be based on scientific evidence.

Katie Armstrong: Let me clarify what I know about this since I've been representing the Board. We were asked to look at SB 324. In essence what SB 324 is commanding the Board of Agriculture to do something, which is to adopt regulations for motor vehicles specifications based on scientific evidence. It is correct that there is no retroactive language within the bill. It's not contained within the bill, but we had meetings with Senator Townsend and John Sande also based on what happened to the December, 2007, Board meeting where they had moved to open this up to workshop and hearings and based on the language in SB 324, it was recommended to the Board to relook at the issue. They are correct in that this Board can look at the issue and determine that "we think our decision of 2004 stands". We're fine. But it was recommended to reopen the issue and see how that decision was based and if we want to change it or if the Board wants to change it.

Alan Perazzo: Does that answer your question Paul?

Paul Anderson: Yes, it does. So, the way I'm hearing it, is that SB 324 is not retroactive in that likewise applying to the 38<sup>th</sup> parallel, the Board we can look at the scientific evidence, but it doesn't have to be applied as it is not retroactive.

Katie Armstrong: Correct, although, I will clarify, the Board can open up and look at your own regulations anytime you want to and decide to change those or not. The language in SB324 talks about scientific evidence and I think you, yourself as a Board, when making decisions should base it on something. I don't know what it was based on in 2004, but you it is wise to base it on something.

Dave Stix, Jr.: This Board took the necessary steps to cover the law after it was changed in '07 and we're being asked that the data that this Board looked at since the law was changed, this Board felt that the scientific data that was presented said to leave it status quo. I'm just asking the people who were sitting here and were at the hearings was.....

Paul Anderson: We're here at the hearing right now for us to listen to the scientific evidence. The way that I understand it and correct me if I am wrong Katie, but what we are getting ready to do is ....this is the hearing to follow with the workshops and hearings regarding the 38<sup>th</sup> parallel. What we're going to do, once we're done listening to everybody and asking our questions, is then go to Item B and decide whether or not we want to vote for workshops and hearings to reinstate the 38<sup>th</sup> parallel. If we feel that in 2004, just like today, that information, the reason why they did away with the 38<sup>th</sup> parallel was sound information and we want to hold with that so we don't have to go to workshop and hearings.

Dave Stix, Jr.: So all the specs have really not been completed to comply with the '07 change?

Paul Anderson: That's what we're doing right now.

**Dean Baker made a motion that we do not replace the 38<sup>th</sup> parallel restriction because the science we have listened to today would lead me to believe that its not necessary with the fact the Clark County has separate fuel that takes care of the**

**problems would be possible. And I see no reason to reinstate the 38<sup>th</sup> parallel. I understand that legally we can do this.**

**Jim Snyder seconded the motion.**

Chairman Perazzo requested Dean Baker to restate the motion he made.

**Dean Baker: My intent is that because Clark County has the legality to make the fuel match the southern area, in other words like it would have if it was below the 38<sup>th</sup> parallel, that we have listened to the scientific information here and would view the scientific information it is our opinion to not reinstate the 38<sup>th</sup> parallel. Simply leave it that Clark County is separate. Also, that we have heard that we legally do not have to reinstate the 38<sup>th</sup> parallel; that the consideration and seminars that they have had, we do not have to reconsider putting the 38<sup>th</sup> parallel back in. We are leaving it the way it was.**

**Jim Snyder seconded the motion.**

**Motion passed.**

**C. Request permission to adopt as permanent, proposed changes to NAC 590.065 (LCB File No. R111-08)**

**8.C.1 Updating the regulation as it pertains to gasoline-ethanol blends.**

Bill Striejewski: Item C is a multi-part item and I would like to say a few remarks as an overview of the item. It all pertains to changes to the NAC 590.065 and it's in LCB File No. R111-08. This goes back a ways.

NAC 590.065 is the section that sets specifications for gasoline and exceptions to those specifications. Over the past year, a number of issues pertaining have been brought to the Bureau. With the increased uses of ethanol in gasoline as a result of Renewable Fuel Standard, it was necessary to include language which dealt with gasoline-ethanol blends and the effects of adding ethanol would have on some of the parameters of gasoline.

But before this issue could be rectified, there were several others that were brought to my attention. First, Clark County Air Quality was working with the EPA to update their Carbon Monoxide Maintenance Plan as Robert commented on this morning. They requested that the winter time vapor pressure maximum be raised from its present level of 9.0 psi to 13.5. In addition, a request was brought on behalf of the Afton Corporation to remove the State's prohibition on manganese. Finally, the subsection of 590.065 which dealt with the maximum allowable sulfur levels in gasoline had not kept up with federal limits and needed to be adjusted accordingly. A workshop and a hearing had been held on this LCB file and I've included in your packet a page of changes that had been settled on by the time that the packet materials were requested.

It was asked that these issues be presented individually as action items so each can be denied or approved by the Board based on their own merits.

So I would like to start 8.C.1 – Updating the regulation as it pertains to gasoline-ethanol blends.

This issue was the original emphasis and much has happened since the file was originated by my predecessor Vern Miller. Vernon brought this before you so that language could be incorporated because of the federally mandated use of gasoline-ethanol blends outside of Clark and Washoe Counties. As seen on the sheet of changes, there are two that relate to this item. The first is a request for the deletion of subsection 6 of the file which states distillation temperatures do not apply to ethanol blends and sets the T50 temperature at 66 degrees Celsius. Since this draft was submitted, ASTM, as well as the National Committee of Weights and Measures (NCWM), have approved this temperature that T50 must be at least 60 degrees Celsius. Therefore, this section is actually superfluous.

The second is a rewording of subsection 5 that talks about vapor-liquid ratio requirements and that it does not apply to ethanol blends containing up to 10.0 percent ethanol by volume.

Since I submitted this draft, ASTM and NCWM have approved the limits for gasoline-ethanol blends. I'd like to use the language which is included on the sheet with the proposed changes. The language that is in NIST Handbook 130, which I won't take the time to read; it's fairly lengthy. I believe that with these changes included, that we now have regulations that accurately reflect regulating gasoline-ethanol blends at least at the current time and allows refiners and blenders to no longer have to work under a letter of discretion as they have up until this time since the time that Vernon invoked that. With that I would like to ask the Board to approve these changes in this section of 590.065.

**Paul Anderson made a motion to approve updating of the regulation as it pertains to gasoline and gasoline-ethanol blends in the NAC 590.065.**

**Hank Vogler seconded the motion.**

**Motion passed.**

### **8.C.2 Clark County's Department of Air Quality and Environment Management (DAQEUM) request to increase the wintertime RVP maximum.**

Bill Strijewski: The next item is the request by Clark County Air Quality to increase the wintertime RVP maximum. I said nearly all the things that needed to be said in my overview of this. Robert Tekniepe has commented on it and certainly he may have further comments.

Again, Clark County is just updating their Carbon Monoxide Maintenance Plan in conjunction with the EPA. My only further comment is that during the course of workshop

and hearing, this change did not elicit any comments or disagreement. So I ask that the change be approved so that Clark County can continue moving forward with the EPA.

**Hank Vogler moved to approve.**  
**Paul Noe seconded the motion.**

Robert Tekniepe: I just want to thank not only the Board, but the industry representatives and stakeholders for moving this forward for the Board's adoption. Lastly, I got to thank Bill for doing one heck of a job up there. I can't say enough for his roll in the Department of Agriculture and moving these items, not only this item, but other items forward. My question to Bill is "as the Senior Chemist, do you spend any time in the lab at all"? I look forward to the Board's favorable approval of this. Thank you.

**Motion passed.**

Bill Strijewske requested that the Board hear Item 8.C.4 before Item 8.C.3 because it can be readily and easily dispensed and then come back to this third item.

Chairman Perazzo: Let the record be noted that we are going to C.4 and then backtrack to C.3.

#### **8.C.4 Updating the allowed sulfur maximum.**

Bill Strijewske: Item C.4 is asking to update the allowed sulfur maximum in gasoline. By way of some background, the EPA published their Tier 2 Gasoline-Sulfur final rule on January 1, 2006. So, Nevada is way overdue to bring our regulations in line with these limits.

The LCB File No. R111-08 is submitted with a new stated maximum of 80 ppm which corresponds to EPA's maximum refinery importer per gallon cap. EPA also speaks of a downstream retail per gallon cap of 95 ppm. There was a comment at workshop that this 95 ppm limit would be best for the retailer. I kept this under consideration and asked my regional counterparts for the one that they follow. From the responses that I received; the 95 ppm limit was usually observed. In addition, I found an explanation which I thought clearly defined these limits and which was sent to an Association of Independent Gasoline Marketers. It quoted from the Federal Register that the 80 ppm specification is what is referred to as a Refinery Gate Program meaning that at the refinery or the point of importation, in other words the tank farms, they are required to meet the 80 ppm maximum. But that the 95 ppm specification, also allowed by the EPA, is higher than the 80 ppm to provide the variability in test results on a random load of fuel that the retailer receives.

On March 1, 2006, according to the EPA all downstream locations must meet the 95 ppm standard. The 95 ppm standard is in general, a regionally followed spec, but this level is allowed by EPA to account for variability, I would like to ask the Board to approve a change

in the gasoline-sulfur maximum to 95 ppm rather than the originally requested 80. I passed out to all the members this morning, a sheet that details the same thing.

There were no issues with either of the limits, either 80 or 95 ppm at the workshops and hearings. Only those comments about which might be more appropriate. Right now the state limit is set way too high and out of line with the federal specification. I believe with the 95 allowed by the EPA is actually easier on the retailer and shouldn't offer any problems with the end user and so I ask that the Board approve the change to 95 ppm.

**Paul Anderson made a motion to update the allowed sulphur maximum per NAC 590.065.**

**Paul Noe seconded the motion.**

**Motion passed.**

### **3. Request to remove the prohibition to manganese in gasoline.**

Bill Strijewski: C.3 was a request to remove the State's prohibition to manganese in gasoline. I know that both sides of this issue have representatives here to make presentations and so I think as you have all seen this is a fairly complicated issue. I am willing to try and review and frame the subject.

When the request was made to Director Lesperance and myself and later to you on the Board to review this prohibition, little did I realize exactly how big this issue would be. Maybe that's my naivete, part of the industry that I did not really know anything about. By way of brief history, MMT and I won't give the full chemical name, but MMT is a gasoline additive. It evolved as a replacement octane booster during the time that lead was being removed from gasoline. Quite soon after that there was opposition to the use of MMT by the USEPA on the grounds that manganese caused both mechanical issues in automobile's emission systems and also health problems. In 1977, the EPA prohibited manganese use in gasoline. At some point during the period when manganese was banned, the State of Nevada enacted our own prohibition. I've spoken to the people who held my position going back, four of them. None of them really remembers doing it, but it was done. But, I have to believe that it happened during this time period.

In 1995, the EPA removed their prohibition to manganese and MMT, however, I think the contents of your Board packet, you could easily reflect that the controversy concerning MMT is far from over. But I want to apologize to the Board members for the sheer volume of information I provided you. But this was all documentation either sent to me in advance of meetings, provided to me in meetings, or shown as exhibits in workshops and hearings. I found that some documents are so large, and thankfully are available on the internet, that I did not include in the packet, but there is a page of several of those listed with their web addresses.

I think at this time, I would like to mention that there have been a number of groups who have come out in opposition to the use of MMT and those include both the auto manufacturing groups; the AAMA and AIAM, one of which I think will speak to you this afternoon. WSPA had come out in opposition. Other refiners such as Chevron, the MECA, which is the emission systems group and the Council on Clean Transportation. They have sent me that information on three different occasions – the same thing.

Now, I will also at the same time, comment that the Afton Corporation has stated us to meet in smaller group meetings as well as the workshop and hearing, as the EPA has approved the use MMT. It is currently used in some parts of the U. S., though not extensively. It has been promoted by refiners in Utah, letters of which can be found in your packet. Likewise, Afton has received approval from the EPA on their Tier 2 health studies. Now, I've got that letter, I believe too late to include in your Board packet, but I think that was among the material that I sent you by e-mail.

Finally, I want to comment that in the workshop and hearing process only one state or county agency has gone on record as to their feelings on MMT, this was the Nevada Department of Environmental Protection which stated at the October workshop that they were not opposed to the use of MMT, as long as its level was kept at or below the specified maximum of 8 ppm.

Now on the subject of regulatory work, the Petroleum Bureau is first and foremost a regulatory body. The Director has made it clear, and I agree, that if a decision is made to lift the prohibition, that the Bureau must be able to analyze gasoline samples for their manganese concentration. There is an ASTM method for this analysis. I've looked into the cost of either purchasing and installing equipment in both in the Sparks laboratory and the Las Vegas laboratory or sending samples to an outside lab for analysis. And in both cases, the cost to the Bureau at this time would be prohibitive. Not only is the equipment needed, but the due to the method, in one of the reagents used, work would have to be done on the HVAC system in both laboratories to make this a safe analysis.

In addition, depending on the footprint of the instruments, the Las Vegas lab already has significant issues when it comes to space. And it may be difficult to put an instrument into the existing space.

Now this is the end of my prepared statement and I will answer questions as best as I can, but I know also that both sides of this issue are prepared to speak to you as well.

The following made presentations in favor of approval of the use of MMT:

- Peter Krueger, Nevada Petroleum Marketers Association
- Laura Ruiz & John Walsh, Afton Chemical Corporation
- Timothy Hay, Reno resident

The following made presentations opposed to removing the ban:

- John Cabaniss, Association of International Automobile Manufacturers
- Alfredo Elonzo, Alliance for Automobile Manufacturers
- John Sande, Nevada Franchised Auto Dealers
- Nick Economides, Chevron

Chairman Perazzo asked for Board member Paul Anderson to make a comment.

Paul Anderson: On this one, in just the last week and a half, this is the information that we have received just from the Afton group. We have that same amount of information that's been provided by all the other stakeholders in the event. This thing here has gone beyond difficult to get into. There's one bibliography in here, I don't if you guys saw it, but it was two pages long. If you go in and study that, you're going to be doing it for quite some time.

I have several concerns with this issue and that's why I think that we need to come look at it again. What is the best for the State of Nevada? It comes down to something like competitive edge and that's solely what this is all about and obviously we need to be looking at it. If this is the doctor with the cigarette in his mouth saying this one is the great one, we need to be concerned about that. For us as a Department or a Board to be told that it is cost prohibitive for the equipment, the training, the upgrading the facility, I don't know how many of you have seen the lab in Las Vegas, to add another piece of equipment is not going to happen in that room. I don't foresee that it's going to be an easy solution to say yes, the Department can now test for this product and make sure that indeed we are following the guidelines.

Tony Lesperance: First of all as Director, I want to make it absolutely clear, that I will not take a side in this as a Director. My main concern is about the welfare of the Department and how we can function. I will tell you point blank that at this point in time, we do not have laboratory facilities for analytical work of this nature in Las Vegas. We possibly do here in Reno. However, it is my contention, that in order to be sure you can guarantee chain of title on anything that is controversial, if it is sampled in Las Vegas, it almost has to be analyzed in Las Vegas. The way we work around that now is we have a person who works for the Department who drives the sample to Reno. We do not allow that sample ever out of our possession. So, this is going to create a hardship for us.

Afton said they would be happy to pay for all of this. I would want that down in writing before I would ever agree to a statement being made like that, because it is going to cost a lot of money. I don't what Afton really is going to do that or not. An individual said they would. That would have to be by contract before I would ever agree to this. The chain of title on any of these things is absolutely critical. And you've got to have the right analytical work, because if you get into this and it's controversial, you'll be in court.

So far our analytical work is impeccable. As your Director, I am going to keep it that way. So I am not at all interested in working with DRI or anybody else because that is how you get in trouble. It has to be done by us and has to be done correctly.

Paul Anderson: I agree. I think we've got to be very cautious. At one point, a comment was brought up about labeling on pumps. It went back and forth, one said "oh, I don't think you need to say it", another one said "you do". I don't know one way or another to the point where even I've already asked Lon Beal to check into it. I guess what I'm saying is there are a lot of issues, material wise as well as regulations, equipment costs that I don't think that we're in a position that we can make a decision on it right now. I don't feel comfortable saying one direction or the other right now.

So, I guess what I'm leading us to is I truly feel this item needs to be tabled. Because there is too much information that we need to digest and study before we can make a movement.

Hank Vogler: I am going to second Mr. Anderson's motion to table this until we can get a little more clarity. I don't think we're that far off of this, but maybe we need to table it for right now and bring it back at the next meeting for an action item. We've heard the testimony, we have the information in front of us, but let's get a little more information.

Paul Noe: I agree that we should table this because I feel that we should not make a decision based strictly on the financial abilities of the Department or the Board. We need more hard evidence to base that decision on what's best for Nevadans and what is best for them. As of right now, personally, I don't think we have enough information. We need more hard, raw data from places that actually use MMT and compare it to places that do not.

Jim Snyder: I think it's a good idea to table it; I'm in favor of that.

Paul Anderson: Could we restate the motion?

Director Lesperance: If the Board chooses to table this, I would remind you, you have more information in front of you than I've ever seen in my tenure as Director on any one subject. And if you have inadequate information now to make a decision, I will ask of you what information do you want us to provide that you do not have at this point in time? I will guarantee you Dr. Bill has put way too much effort into this already. Other things go by the wayside in order to meet these types of requirements. We do not have the manpower, we do not have the ability to answer every single question. You already have, how much information? Hold it up...I want to see what you have right now. You tell me what you want, we'll get it for you. But I am not going to out and search, search and search, because I don't have the time, Bill doesn't have the time, this staff doesn't have the time.

Ramona Morrison: What's got me concerned more than anything is the lab. I think that this Board needs to back up, take a break and talk with the Director to determine if this thing is even viable. My major concern with this is budgetary concerns, not scientific concerns. So that's why I supported the motion to table it. As far as tying up anymore time with Bill, I should hope not. I think we've got enough. But we need to talk to the Director, I think, to determine what we physically can do and what we cannot do. We've got more budget cuts

coming and I think we need to look at this very carefully before we as a Board, in a two-hour discussion, get the Department pregnant with something that we cannot afford to do.

Jim Snyder: I move that we go forward with the discussions here and get it done.

Paul Anderson: As far as tabling it or just hash it out?

Jim Snyder: No, hash it out and if someone come up with a motion.

Ramona Morrison: We're not quite ready to address those concerns. That's why I'm concerned about this.

Director Lesperance: Okay, I will address those concerns. A) we do not have a laboratory space to do this in southern Nevada; we do have laboratory space to do it here. If we get an Atomic Absorption Unit set up here, which will cost a lot more than 25,000 dollars once it's in place and operational, do we have the time with our current staff which includes one chemist who's already working a great deal of time, and we no longer pay overtime, and I expect her to get the job done. Bill, you can comment to this. I don't care.

And everything that has been raised, I've heard it said today that it may be required to indicate on the pump that manganese is an additive. Does anybody have the slightest idea what that's going to cost? It will cost us several hundred thousand dollars to service the pumps in the State of Nevada to indicate that manganese is there or not. Now, I can guarantee you the Department does not have those kinds of dollars nor will they have on the horizon, nor do I expect the taxpayers of the State of Nevada to pay for that.

Jim Snyder: I do not see a compelling reason to lift the ban. In the interest of moving ahead, I move that we lift the ban.

Ramona Morrison: Tony, what is your preference, what's your guidance to this Board? To table it or make a decision? Based on the concerns we've raised. Again, this Department has no leeway.

Director Lesperance: We just sent a 3% reduction to the Governor of our current general funds and I read in the newspaper this morning, there is probably going to be another 10 – 15% on top of that. I've already estimated that this Department is going to have to kickback a half million dollars which basically will make it impossible for us to comply with a goodly share of the present requirements that we already have. It doesn't make any difference. I'd say go ahead. If you guys want to vote on it today, vote on it. If you want to table it, all I'm saying is that I don't think Bill has the time to provide you with anymore information than he already has. If industry wants to take the time to provide you more information, that's fine. Do you want to take the time to read another stack of information or do you want to make a decision today? If I were a member of this Board, I'd say I'd make a decision today.

**Jim Snyder: I move that we lift the ban on MMT.**

**Hank Vogler: Seconded the motion**

Polled vote:

Anderson – no

Poe – no

Plaskett – yes

Spratling – no

Stix – no

Vogler – yes

Snyder – no

Baker – yes

Morrison – yes

Perazzo - yes

5 yes / 5 no

Katie Armstrong: Motion failed, the status remains the same.

Dave Stix, Jr.: I would like to make a motion to continue with the ban of MMT in the State of Nevada.

Jim Snyder: I seconded the motion.

Dave Stix, Jr.: Mr. Chairman, I am going to remove my motion that I made previously.

Jim Snyder: I am not going to remove my second.

Jim Snyder: I will withdraw my second.

Hank Vogler: I move we table this issue as it is an action item until we can find some clarity; are we violating some interstate commerce laws which can get through our legal counsel.

Chairman Perazzo: I like to know if we do lift the ban if the Department has to test for it, if they have to label, whatever.

**Hank Vogler: I accept that as an amendment. A narrow scope; no more voluminous amounts of information. I agree with you.**

**Ramona Morrison: Seconded the motion.**

Polled vote:

Anderson – yes

Noe – yes

Plaskett – no

Baker – no

Snyder – no

Vogler – yes

Stix – no

Spratling - yes

Morrison – yes

Perazzo – yes

6 yes / 4 no

**D. Request permission to adopt as permanent, proposed changes to NAC 590.051 (biodiesel regulations). (LCB File No. R209-08)**

Bill Strijewski: I would like to begin Item B by making sure everyone has the two pages I passed out to everyone this morning. This item has to do adopting changes to the NAC 590.051 which has to do with biodiesel regulations. The first sheet is just a summation of the minor changes that were suggested during the workshop and hearing process. Again, I have spoken to LCB about those and they had no problem.

**Boyd Spratling: I move that we adopt as permanent the proposed changes to NAC 590.051.**

**Paul Anderson: Seconded the motion**

**Motion passed.**

**E. Gasoline Supply Variance Procedure approved by Legislative Commission.**

Bill Strijewski; This is an information item and I just bring this to you to close the door on it, At the September meeting, you approved as permanent the variance procedure that was LCB File R010-09. The next step was for me to submit a packet of information to the LCB and then have it approved by the Legislative Commission. There were a couple of very minor changes that I talked about at that time. I've included in your Board packet, the final, approved, adopted regulation as approved by the Legislative Commission on October 26<sup>th</sup>.

**F. Update on labs in Reno and Las Vegas.**

We're working as hard as we can. Our sample load is as high as we can have it. It is much better than a couple of years ago. I'd like to thank Lon Beal and David Walsh for

their help on the Weights and Measures end for making that possible. More importantly, I'd like to thank Shannon Rudolph in Las Vegas and Christi Lew, my lab chemists, who make it all possible.

## **9. Plant Industry**

Director Lesperance presented for Dawn Rafferty. A quick division update; I have requested that they prepare their own budget as I've told you in my report yesterday. I've also requested that they show me how they can cough up 100,000 dollars out of their budget. Which is almost an impossibility, but nevertheless, I've requested that of all the employee's Divisions that deal with general funds.

There are two other items that are in there that are just informational only. That's the EPA report and a safety report.

The one thing that does bother me is Item D. Noxious Weed Update. I think we're okay on that. We received 5 million dollars AARA funding from the federal government and that is all going to reclamation projects in western Nevada, mostly from fire. We have gotten a request to show how many jobs have been created because of this funding. All this went out to contractors. So we're trying to get around that where those contractors didn't have any job prior to this funding surfacing, so we're meeting the job requirements we hope.

## **10. Animal Industry**

Dr. LaRussa:

**A. Request to go to workshop and hearing with proposed changes to NAC 571.600 – 668. The Proposed change is to allow one RT-PCR test as an option to the 3 in-pouch tests that are presently specified in the NAC.**

Dave Stix, Jr., made a motion to approve going to forward with hearings on the proposed addition of the new test.

Jim Snyder: Seconded the motion.

Motion passed.

**B. Request the Board's opinion and/or approval on the penalties for violations and the need for modification on NRS 571.250 through the bill draft request process.**

Dr. LaRussa:

After his presentation was made to the Board, Dr. LaRussa suggested to the Board at his conclusion that his action item be turned down by the Board.

**Dave Stix, Jr.: So moved.**

**Hank Vogler: Seconded the motion**

**Motion passed.**

### **C. USDA Brucellosis and Tuberculosis updates.**

Update was presented by Dr. LaRussa.

### **D. T. fetus RT-PCR**

Presentation by Dr. Anette Rink.

### **E. Request approval from the Board of Agriculture to approve the proposed ADL fee schedule for 2010 which includes fee increases and new fees.**

Presentation by Dr. Anette Rink.

**Hank Vogler moved to approve fees.**

**Paul Noe seconded the motion.**

**Motion passed.**

### **11. Department employee comments and suggestions to the Board of Agriculture.**

None

### **12. Public Comments**

Don Alt, Nevada Livestock Association, made comments about the fees.

### **13. Date of next meeting**

**Dave Stix, Jr., made a motion that the next Board meeting be held March 2 & 3, 2010.**

**Ramona Morrison seconded the motion.**

**Motion passed.**

### **14. Adjournment**

**Hank Vogler made a motion to adjourn.**

**Martin Plaskett seconded the motion**

**Motion passed.**

