

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-sixth Session
March 25, 2011**

The Senate Committee on Natural Resources was called to order by Chair Mark A. Manendo at 2:43 p.m. on Friday, March 25, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. Manendo, Chair
Senator David R. Parks, Vice Chair
Senator John J. Lee
Senator Dean A. Rhoads
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness, Central Nevada Senatorial District

STAFF MEMBERS PRESENT:

Michelle Van Geel, Policy Analyst
Charity Fowler, Counsel
Sandra Hudgens, Committee Secretary

OTHERS PRESENT:

Connie Simkins, Secretary, N-4 State Grazing Board
Wes Henderson, Deputy Director, Nevada Association of Counties
Patti Chipman, Nye County
Joe Johnson, Sierra Club, Toiyabe Chapter
Don Mello
Glenn Miller, Professor, Department of Natural Resources and Environmental
Science, University of Nevada, Reno
Lorraine Griffin

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Holly Bute

Donna Jerman

Sandra Mello

Neena Laxalt, Nevada Propane Dealers Association

Keith Lee, Liquefied Petroleum Gas Board

Tom Clark, Bango Oil

Colleen Cripps, Ph.D., Administrator, Division of Environmental Protection, State
Department of Conservation and Natural Resources

Mike Elgis, Deputy Administrator, Division of Environmental Protection, State
Department of Conservation and Natural Resources

Kevin Dick, Director, Air Quality Management Division, Washoe County Health
District

Peter Krueger, Nevada Petroleum Marketers & Convenience Store Association

Terry Graves, Henderson Chamber of Commerce

Gary Miller, Manager, Compliance and Enforcement, Clark County Department
of Air Quality and Environmental Management

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation

David Bowers, P.E., P.T.O.E., City Engineer, Department of Public Works, City
of Las Vegas

Judy Stokey, Executive, Government and External Affairs, Government and
Community Strategy, NV Energy

Ken Arnold, Environmental Chief, City of Carson City

Mike Workman, Director, Lyon County Utilities Department

CHAIR MANENDO:

I will open the hearing on Senate Bill (S.B.) 287.

[SENATE BILL 287](#): Expresses opposition to the location of a proposed wind
power project on Mount Wilson and Table Mountain. (BDR S-216)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

This bill is aimed at the proposed wind project in Lincoln County; I will read my
written testimony ([Exhibit C](#)).

CONNIE SIMKINS (Secretary, N-4 State Grazing Board):

The N-4 State Grazing Board covers White Pine and Lincoln Counties. We
support S.B. 287. The four main topics of the report you have are: wilderness,
sage grouse habitat, renewable energy and my cultural heritage. They are
discussed in my written testimony ([Exhibit D](#)). Federal legislation designated

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720,000 acres of wilderness in Lincoln County, which is 220,000 acres more than we asked for, and it is enough. There are three designated wilderness areas surrounding the top of Mount Wilson and the top of Table Mountain. You will see where the wilderness areas are located on the map ([Exhibit E](#)).

On page 2 of S.B. 287, line 16, section 1, subsection 6; please change the word "wilderness" to "multiple use".

The sage grouse are close to becoming an endangered species. Wyoming sent a letter to the Bureau of Land Management (BLM) stating, "If you issue any permits for wind generation in areas designated as critical habitat for sage grouse, we will immediately list the sage grouse" This has not happened in Nevada, but it is expected to occur according to the Department of Wildlife (DOW) staff and the U.S. Fish and Wildlife Service staff. We want to avoid that.

The blue areas on the map are designated wilderness areas, [Exhibit E](#). The tan areas are where sage grouse like to have their young. The slash marks are where sage grouse like to live. It is important to help the sage grouse.

The people in Lincoln County and the Lincoln County Commission have taken a stand in favor of renewable energy in places where appropriate to technological conditions. We want to be in the planning process. We have suggested areas where wind energy would work; these two mountain tops would not work. Lincoln County Commissioners wrote a letter to Western Area Power Administration, LS Power and NV Energy suggesting a better site. They have not received a response.

These mountains are important to hundreds of families living in Lincoln County and to those Nevadans coming from the urban area to the mountains. I have provided you with a compact disc containing 84 pictures taken on the top of Table Mountain ([Exhibit F](#), original is on file in the Research Library). This area has been my cultural heritage for four generations. The families I mentioned have history invested in this area. The new map I have provided shows the sage grouse habitat area we are talking about in this bill ([Exhibit G](#)).

SENATOR LEE:

Are any of the Lincoln County Commissioners here today?

Ms. SIMKINS:

No, I am representing myself and the grazing board in a nonpaid position.

SENATOR LEE:

Your county commissioners are not here in support of this bill. Is that correct?

Ms. SIMKINS:

That is correct.

SENATOR LEE:

Every time I talk to people in Lincoln County, they say: we do not have any minerals; you cannot hurt our county; we would like to help out the State; but we do not have anything. We continue to hear, "Help us." The State had to fix the roof on the school because the county did not have enough money to do it. That is what I am talking about. You finally have something you can build in your community that will bring benefit to Nevada. It will generate jobs and start you on the economic path with the rest of the State. Whether you do not want the wind power in this area, or if you want it 40 miles away, I do not know. I understand transmission lines have to go somewhere. I understand you do not want the sage grouse listed as an endangered species. You cannot stand the federal government. If U.S. Senator Harry Reid were to come and do this, it would not be a good situation.

Ms. SIMKINS:

I did not say that.

SENATOR LEE:

But if U.S. Senator Reid had tried to do this, you would have tarred and feathered him. Now, the sage grouse has become your best friend. Is this project harming your hunting-season business? There is more to this bill than what is written on this paper.

Ms. SIMKINS:

I can agree with most of your assessments. We do stand in favor of wind energy in Lincoln County, but not in this particular place. We have suggested other areas for an economically viable wind project that would not impact the sage grouse, recreation or the grazing, and I can show you on a map. We have worked with these wind-generating companies who say they can make more money if we go on top of those mountains. We want all kinds of renewable

energy projects, whether it is wind, solar, geothermal or biomass. We are inviting it. We want to be part of the economically viable process so we can live with them.

SENATOR LEE:
How far away are the wind turbines?

Ms. SIMKINS:
Far away from what?

SENATOR LEE:
Far away from where they are now. If you move them, will they have to build all new roads?

Ms. SIMKINS:
They are going to have to build all new roads, anyway.

SENATOR LEE:
I thought there were some roads. How far away from this proposed location is it to where you propose the new location?

Ms. SIMKINS:
The new location would be ten miles away, making it closer to the main power transmission line at the southwest corridor.

WES HENDERSON (Deputy Director, Nevada Association of Counties):
The Nevada Association of Counties supports the development of renewable energy throughout the State, including the generation of electricity through wind. We support Senator Rhoads's bill. In April 2008, our board of directors adopted a resolution regarding county approval of wind generation on public lands ([Exhibit H](#)). We would like the counties to have a say on the location of renewable energy on public land in their counties.

PATTI CHIPMAN (Nye County):
We support Lincoln County in their efforts to direct the wind power to have less impact on their community.

JOE JOHNSON: (Sierra Club, Toiyabe Chapter):

I am in support of almost all of the provisions. The Sierra Club supports renewable energy in appropriately sited areas. These two areas in this bill are not appropriate. We do not want the nature of these areas disrupted. As an exploration geologist, I have been to these areas. It is a pristine area that should not be disrupted by an energy development area.

Just simply to comment on section 1, subsection 8, and the sage grouse habitat by identifying them as the, just simply, that it's a sage grouse habitat, probably interferes in all that area you see on the map [\[Exhibit E\]](#). That is sage grouse habitat and would be disruptive in the future of development of sites that would otherwise be developable. ... We would prefer to see that language deleted from the bill, simply being sensitive to the overall issue of listing. We are not in favor of listing at this time in Nevada. ... we're supporting of the overall ideas that are present in this bill. We, also, just simply, question the issue of bringing this piece of named legislation rather than a resolution. That is the decision of the prime sponsor.

CHAIR MANENDO:

I am going to close the hearing on S.B. 287, and open the hearing on S.B. 298.

[SENATE BILL 298](#): Enacts provisions governing noxious odors. (BDR 40-1077)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

This bill was drafted as a courtesy to my constituents as outlined in my handout [\(Exhibit I\)](#).

DON MELLO:

Several people are here today in support of S.B. 298. The problem started in 2007 when Bango Oil started their used-oil refinery. By refining oil, they produce several products. They testified before the State Environmental Commission (SEC), the Division of Environmental Protection (DEP), State Department of Conservation and Natural Resources, the Churchill County Commissioners and the Churchill Planning Department [\(Exhibit J\)](#). In every testimony, they said there would be no odor, they said there would be carbon dioxide (CO₂) and water vapor. Since 2007, there has been

no improvement on the odor. We started reporting the odors to the SEC in June 2007. Since July 2007, there have been 1,378 reports of noxious odors. Since January 2011, there have been 288. That averages three reports a day. We do not know when the odor will hit. Every time the wind changes, somebody gets the odor. There has never been a report of noxious odors in 80 years, until March 2007 when Bango Oil started their operation in January 2007.

The DEP said if there were an odor, it would only travel a couple hundred yards, when it actually travels for miles. The DEP says it is a county issue; the county says the noxious odor is a DEP issue. Meanwhile, we are living with that odor. We cannot move. This is our retirement home, and other neighbors have lived here for years. It would be difficult to sell our house right now, because of the economy, and because we would be required to acknowledge, in an affidavit, that we have a noxious odor in our house. We cannot continue living like this. During the Martin Luther King holiday, the odor was constant and horrendous. The odors are worse after business hours when state workers are on leave. We have been required to make two tests of the odor, one hour apart. After we capture the odor in a Kevlar bag, we are to send it back East. It cannot be tested in Nevada. The sample is diluted by eight parts. If there is still an odor, Bango Oil would have exceeded their limits. When you are in your house, you cannot dilute the odor eight times. We have been fighting this problem for four years. If the odor traveled a couple of yards, we would not be here today complaining about it. The DEP has never called us to find out if the odor is still present. We want our quality of life back. We are not asking the company to leave, we want them to clean up the facility like they promised.

CHAIR MANENDO:

What kind of odor are you smelling? I am familiar with odors.

MR. MELLO:

We get three odors: one we call a pretty smell, which is a perfume-type smell that is worse than the original odor; we have a chemical-smelling odor similar to a cleaning-product smell, which is a horrible smell; and we have a third odor that smells like a burnt oil/antifreeze mix. They refine old oil from garages in Nevada and California. The oil from California was considered hazardous waste at one time, until the law changed. We have been told there are no health issues. We had a leukemia cluster about ten years ago. Hillary Clinton could not

find the problem. I believe there is a health problem, and we will not know for many years. It is easy for the DEP to say there is no problem at this time.

CHAIR MANENDO:

Are there other things that could possibly contribute to the odors? Is there another plant? Is there drainage, a channel, a river or a farm?

MR. MELLO:

Bango Oil sits on the side of a hill. My home is on the Carson River which is downhill from Bango Oil. The Desert Research Institute (DRI) did a one-year study on the correlation between wind direction and the times and dates that the complaints were made. It was confirmed there was a direct correlation with the odor and the wind direction. There is nothing else out there. The DEP will confirm there are gravel pits and industrial parks there. There is nothing that could produce that smell. You can smell the odor while they are "cooking" the stuff when you are right there. I use to drive around the facility at one time and could smell the odor, but I now have a restraining order against me. The odor could not be coming from any place else, and DRI also agrees.

CHAIR MANENDO:

At one time my district had issues with odor. We started a coalition for odor control because of foul smells. We went to the county commission with several thousand signatures on petitions. The opposition said it was garbage night. We found there were other contributing factors, it was not just one area.

MR. MELLO:

There was never a single odor complaint in the 80 years before Bango Oil started operations. I have lived in my home by the river for 20 years. In 2007, when the odor was the worst, you could feel the oil on the leaves. When we called the DRI, not a single person ever came out to the house. No one wants to find the problem, because they would have to fix it, and nobody knows how to fix it. We do not want them to leave, but we cannot continue living like we are. We want to return to the quality of life we had before Bango Oil came. They are the ones that moved here.

SENATOR LEE:

You said the local government said it was not their problem. Did they say it is the State's problem? Does the local government have a health district in Churchill County?

MR. MELLO:

It is the Churchill County Board of Commissioners. I think the county commissioners "threw us under the bus, as well." I do not think it is all the DEP's problem. The DEP is the protector of the residents of Nevada. There are odors in other counties. There is an odor in Silver Springs from a wood treatment plant.

SENATOR LEE:

Do you have a health department in Churchill County?

MR. MELLO:

Dr. Hockenberry is a health officer, but no one wants to help us.

SENATOR LEE:

We have a pig farm in Clark County that was there before people started moving in the neighborhood. It is noxious, but it is not killing anybody. We have the Clark County Health Department that people could go to if they had an odor problem. I wanted to know if Churchill County had a health department. I can discuss this issue with Senator McGinness.

MR. MELLO:

I do not believe we have a health department. The enforcement officer in the planning department has been working on this issue. I would invite you to take a whiff of this smell from ten feet away to see what we have to live with daily. It is not something we smell every day, it hits us when we are unaware. You cannot plan a party, because you do not know when it will hit, or how long it will be there.

GLENN MILLER (Professor, Department of Natural Resources and Environmental Science, University of Nevada, Reno):

I have been interested in odors for many years. I do work on environmental chemistry pesticides by examining odors. I demonstrate how chemicals communicate from one place to another. I let school children smell different odors such as lemon, licorice, anise and aldehyde. I have worked two sites in Nevada: one is the Bango Oil site and the other is the Nevada Wood Preserving (NWP) site in Silver Springs. Both have had horrendous odor problems. The Silver Springs site has been resolved from suggestions we made. Both sources produced objectionable odors. The Silver Springs site had a solvent molecule called butyl butyrate used to dissolve pentachlorophenol with diesel fuel for

pressure-treated wood. Pressure-treated wood is important for maintaining telephone poles in the ground for 50 years, keeping microorganisms from chewing it up. Butyl butyrate hydrolyzes giving you butyric acid and butyraldehyde which has the smell of baby vomit. Butyraldehyde is more noxious. Butyl butyrate is a nice ester smell. We were able to map butyl butyrate concentrations around the site and demonstrated the odor was coming from the Nevada Wood Preserving site. They have since changed their chemical process. Those noxious odors destroy quality of life. It was determined the smell was worse downwind of the site.

The Bango Oil site is more complicated. Recycling used motor oil is a good business, and Bango Oil produces a good product. Motor oil has a chemical in it that is called diethyl dithiophosphate which is similar to pesticides. The chemical is broken down during engine use to a variety of sulphides. We are sensitive to the smell of sulphides. Hydrogen sulphide is the rotten egg smell. Bango Oil would take the used motor oil, and distill off the early fraction of it which contains diesel and gasoline and other things that are found in oil. A lot of these sulfides came over. We did look at the chemistry a bit; they are masked. Funding was not there, and we just ran some of our instrumentation on it. We did find quite a few sulphides, sulphur-bearing compounds, as well as phosphorous compounds in the sample. We have a specific detector for sulphur and phosphate, but we did not identify them in that case at all. We tried perhaps what might be considered a stunt, although I didn't mean it that way, I just wanted to make sure people understood what the odor was from a sample. I had a small amount in a bottle, and I was at a hearing at the DEP, and I opened the bottle just to see if it smelled and if I could smell it, so I could pass it around and allow people to smell it. Within about ten seconds, everybody in the whole room said, "That's it, that's it, that's it." I closed the bottle, but it was one of those things that changed everyone's minds.

There was little regulatory response for the odor problem on both sites. Both Lyon County and Churchill County were sympathetic to the problem. Even the DEP was sympathetic to the problem. The regulatory stance they have is not working. There is an instrument from a company named St. Croix Sensory that is basically described in regulation, but that protocol is difficult to follow. There is no way to force an odor regulation in Nevada. Washoe County tried to enforce a regulation on odor and had to back off because of a lawsuit threat. Bango Oil contends they have not been shown to be out of compliance with the current regulation. A report was done showing more than 90 percent correlation

of odor complaints at the time when the wind direction was coming from Bango Oil. They are using an uncontrolled burner to burn the material, and it is another indication of the problem. It should be taken into consideration that complaints are from a group of people and not just one individual.

LORRAINE GRIFFIN:

I own 134 acres of farmland one and one-fourth miles from Bango Oil. Included with my written statement ([Exhibit K](#)), is a copy of the Attorney General's Opinion No. 2009-1, dated January 9, 2009 ([Exhibit L](#)). According to the opinion, the county retains authority to regulate nuisances, including odors. I would like to point out the information on page 3, second to the last paragraph, [Exhibit L](#).

HOLLY BUTE:

I am a resident of Churchill County in support of S.B. 298. There will be more problems of this nature as more industry moves into Nevada. The citizens who are already here need to be protected.

SENATOR LEE:

I have nothing from the Churchill County Board of Commissioners asking us to pass this bill, and I do not see any commissioners here. Can you explain this? Is your local government not engaged in this?

MS. BUTE:

Our local government is engaged in this problem. In the past, they have appeared at the Legislature. All the county commissioners were present at the hearing for Bango Oil's renewed air permit. They tend to support the residents, but they feel their hands are tied because we are a small county with limited resources. They have tried to work with the residents and Bango Oil to find a resolution. There is a question of whose responsibility it is; is it the State's responsibility or the county's responsibility? The county instituted the research study done by the University of Nevada, Reno (UNR) and the DRI costing thousands of dollars. They set up a weather station to do a meteorological study by Bango Oil to determine the wind direction from the complaints. We have been documenting the complaints which are given to UNR that verify the data from the weather station. They have determined there is a direct correlation to the complaints and the wind direction. Churchill County is trying to resolve the issue.

SENATOR LEE:

That is what I needed to know.

CHAIR MANENDO:

Do you have a letter from them, or a resolution? Is that something from the past?

MS. BUTE:

I do not know if there is a resolution. I do not know of any letter, but I can try to get one for you.

CHAIR MANENDO:

That is what Senator Lee wanted to know and I would like to know. We should have something for the record.

DONNA JERMAN:

I live on the river side of Bango Oil, and we do not get the odor as bad as some of our neighbors. When we do get it, it is terrible. We have been going to meetings, but nothing is being done. Until Bango Oil is made to correct the problem, nothing is going to be done. Our neighborhood is spread out, starting at 10-acre lots. The odor is spreading to other neighborhoods which were not previously affected. The odor is growing. If that odor were to be let loose in this building, the building would have to be evacuated. We have limited funds, and we are up against a giant. We cannot pick up and move. In this economy, who is going to buy property with an odor problem? Even industrial plants that have changed to cleaner fuels to burn have odor issues. We are concerned about our well water. We are all on wells. There is a State park four miles away where people pay \$20 a night, and have to smell that odor. My granddaughter plays outside and gets nosebleeds.

SANDRA MELLO:

My father has owned a ranch on the Carson River, and our family has been around for over 100 years. My father's ranch has a meat business on it run by my brother. I do not think Bango Oil realized a meat business was across the road when they moved into the area. Churchill County is being sued by Bango Oil, and the County is afraid of what will happen. We the people count, because we made Nevada. I do not understand why we are not getting any help. Bango Oil's production is 22,000 gallons a day. They have been approved by Churchill County and the DEP to triple their production to 62,000 gallons a

day. When that happens, we are going to be sick because we already have headaches and upset stomachs, and children are getting nosebleeds. It is not fair, and we need help. We support S.B. 298. Sharon Boone sent a letter for the record ([Exhibit M](#)).

NEENA LAXALT (Nevada Propane Dealers Association):

I am neutral on the intent of the bill, but it is too broad-based the way it is drafted.

KEITH LEE (Liquefied Petroleum Gas Board):

I represent the Liquefied Petroleum Gas Board in the State. We regulate the propane dealers. Propane has a noxious odor. It smells like rotten eggs because the federal law and regulation mandate it for safety reasons. The propane gas is a hazardous material that is odorless. This bill is so far-reaching. When a dealer fills a propane tank, he bleeds off a little bit of gas, as required by law, to ensure there is no oxygen in the top of the tank. Because of the release of this noxious fuel, we are concerned this would be a noxious-odor complaint that could be filed with the DEP as the proposed bill reads. We would be required to investigate, and would have to give the party a cease and desist order if it were determined there was a release of a noxious odor. Be mindful of the fact there are substances that could be noxious under the definition of this bill, but because of federal law or regulation, it would be required to emit noxious odor.

TOM CLARK (Bango Oil):

Bango Oil is an environmentally sensitive company. They will soon have the capacity to recycle every gallon of used motor oil created in this State. They want to keep the used oil from going into burners that will combust it and put CO₂s and noxious elements into the air. They want to keep the used motor oils from going into landfills and hurting the water and the environment. They have always had the intent of being good neighbors. We are opposed to the bill because the process in place works. We have been through many planning committee meetings in Churchill County. We have been to the DEP, as the bill recommends. We have been to local committee meetings trying to mitigate the concerns of the residents. There have been 2,700 stiff tests around the Bango Oil facility with no proof the odor is coming from the facility. There was no proof there was an odor. We are cooperating with the DRI study. When the facility was first constructed, it had an evaporation pond because water is the only expendable element coming out of the used motor oil. After working with DEP and Churchill County, we decided to eliminate the evaporation pond. Every

gallon of water is trucked and/or railed offsite and treated. We removed a thermal combustor unit where water was blasted into it with hundreds of degrees of heat causing the particles to evaporate. We installed a rail spur to eliminate dust, at a cost of \$15 million. The materials we end up with go directly from tanks, through a pipe, into a rail car and out. The oil that comes into the facility goes out the same way. We have eliminated every possible place from where emissions of odor could come. We have 25 to 30 employees, with the quantity determined by how much product is running through the system. The employees have no health issues or concerns about odor. The employees do not wear apparatus and they do not wear dust masks. They wear safety goggles and steel-toed boots.

Bango Oil hired an employee to be on call 24 hours a day, and seven days a week to receive phone calls when the residents complained about the odor. The residents were to report to the county and the State when they smelled the odor. Bango Oil would then be notified so they could smell the odor. I have not smelled the vial containing the odor. The smell of our product has not smelled noxious to me.

CHAIR MANENDO:
Have you been to Bango Oil?

MR. CLARK:
I have been there ten times.

CHAIR MANENDO:
People can become immune to some smells. In the incident I talked about previously, about an odor in our neighborhood, we won. The employees did not smell the odor we smelled. Does your client believe there are no noxious odors coming from Bango Oil?

MR. CLARK:
We do not believe the odors residents smell are coming from our facility.

CHAIR MANENDO:
What do you think it is?

MR. CLARK:

It is difficult to tell. We offered to look at other areas. The highway behind us was being expanded with asphalt being laid, and the Nevada Department of Transportation had asphalt burners operating. There was a facility in a landfill burning tires at night. We do not know if that was the origin of the odor.

CHAIR MANENDO:

I do not know when those projects you were talking about were completed. I do not know what could cause the odor.

MR. CLARK:

Bango Oil can control only what is happening at the facility. We have made sure the facility is sound, and is not generating any type of emissions that could cause any toxic odor.

CHAIR MANENDO:

Has anyone tested the air around Bango Oil with a monitor?

MR. CLARK:

Bango Oil assumed any study that would have been done would look like an outcome-based study. A third party hired by Churchill County has done the study, testing the air 2,700 times.

CHAIR MANENDO:

When was the most recent test?

MR. CLARK:

I cannot answer that accurately.

COLLEEN CRIPPS, Ph.D. (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

The DEP is opposed to S.B. 298 as it is currently written. We find this bill broad and redundant. We recognize the residents of Silver Springs and Lahontan Valley have been and continue to be impacted by odors. The DEP has worked for several years to determine the source of the odors, and to mitigate them. We recognize it is difficult to demonstrate a violation of existing State odor standards, if there is a reasonable assertion that stationary source is suspected to be the cause. The DEP does not wait to determine if the standard has been exceeded. We immediately begin working with the potential source to

reduce or eliminate the odor through engineering analysis of the facility processes and through the application of process changes and/or additional pollution controls. I disagree that there has been little regulatory response. We have spent more time on this facility and on this issue than almost any other environmental issue my agency regulates. The DEP has conducted numerous inspections, and some have been done during off hours. We responded to complaints, we have conducted odor sampling, completed detail engineering process reviews and asked for process and material changes at points in the operations for potential odors generated.

CHAIR MANENDO:
How many tests?

MIKE ELGIS (Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):
We recently finished a two-week exercise of day, night, weekend and off-hour odor sampling at Bango Oil. We collected 25 different samples that are currently being analyzed.

CHAIR MANENDO:
When will they be back?

MR. ELGIS:
They should be back within the next couple weeks.

CHAIR MANENDO:
I want the results.

MR. ELGIS:
In the time between 2007 and now, we have been at the facility over 200 times. Since the complaints began, we have responded with personnel at Bango Oil to study the processes.

CHAIR MANENDO:
Do you smell anything when you go out there?

MR. ELGIS:

There are odors associated with the products, systems and chemicals they use. I have never experienced odors offsite of the facility, and not in the capacity of the complaints.

DR. CRIPPS:

Even without a documented violation of the State's odor regulation, the two companies, Bango Oil and Nevada Wood Preserving, have made process changes and the added additional controls. They have voluntarily completed all changes that the DEP has requested. We continue to monitor and inspect these facilities and work with them to identify additional potential sources of odor. I have written testimony which I will share with you.

With respect to the bill itself, the Division has four primary concerns. First, the bill raises significant due process concerns. At present, [*Nevada Revised Statutes*] NRS chapter 455B allows the director to issue enforcement and compliance orders. An aggrieved recipient of an order has the opportunity to challenge the order by appealing to the State Environmental Commission, and such an appeal is conducted as a contested case pursuant to NRS 233B, the Nevada Administrative Procedure Act, as well as [NRS] 445B.350. This bill allows the Division to bypass that process and deny an individual that protection. As written, the director is allowed to summon an individual to a hearing, a hearing where the process is unclear and where the individual summoned may leave being compelled to obey an order. Section 1 allows a person to complain of a noxious odor to the director. Upon the receipt of the complaint, the director must send a letter to the person allegedly causing the odor, describing the existence and cause of the odor, as they [sic] were alleged. This must occur and can potentially be done without investigation or substantiation of the existence of the odor. All this can occur based on what a single, ordinary person finds objectionable.

Second, this bill is unconstitutionally vague. The bill defines noxious odor as being objectionable to the senses of an ordinary person and interfering with comfortable enjoyment of life or property. Because it provides no other criteria to make such a determination, even identical odors could be treated differently.

More importantly, there is no way of defending against an allegation that you are causing a noxious odor. If an ordinary person objects to an odor, there is no defense that can prove them wrong. Additionally, the bill makes no allowances for what might be an appropriate place for an odor, such as fertilizer in an agricultural area, or industrial emissions in an industrial zone. Section 7 of the act also allows for the Department to enter and inspect any property or premises at any reasonable time for the purpose of enforcing the new odor law. This may be an overbroad extension of State authority to enter private residences. While the expectations of privacy are greatly reduced in regulated businesses and industry, there exists a high degree of privacy related to individual property and premises. This bill allows the Department to take action based simply on allegations in a letter, including entry of private residences for purposes of investigation.

Finally, this bill would have a significant fiscal impact. It creates a labor-intensive process, and significantly expands the scope of our jurisdiction from the regulation of stationary sources to include any source of an odor. Expanding the scope of the Division's authority to this extent would dramatically increase the resources needed by the Division to respond to this much larger universe of odor complaints. Additional staffing and funding would be needed to provide the required written notice of each complaint within ten days of receipt, prepare for appeals to the State Environmental Commission of the notice, investigate the cause of the alleged odor, document and review all findings, prepare corrective action orders and appear before the SEC. The Division typically receives odor complaints related to about five stationary sources each year. We also receive approximately 130 additional complaints that are not stationary-source related, the majority of which are referred to local government.

Because the response by the Division is triggered by a complaint based solely on what one person perceives to be objectionable, we expect that the number of odor complaints we receive will increase dramatically. We estimate that it will take an additional 5 FTEs [full-time equivalents] to implement this bill as written. ... without sufficient resources, adoption of this bill would limit our authority

to address the pollutants that constitute the environmental and public health threats the air pollution control program is currently designed to address. Odors are generally intermittent and highly transient and, therefore, very difficult to regulate. These characteristics make it especially difficult for a State agency to regulate them, because by the time the Division gets a complaint and dispatches an inspector to investigate, the odor is typically gone. There have been cases where extensive inspections monitoring testing have been done, as we described with the Bango facility, yet Division staff have never experienced the odor, nor have we been able to definitively determine that the reported odor is coming from the facility that everyone believes to be the source. So, let me be clear, I'm not saying the odors don't exist, but this is a good example of the type of difficulty we have in getting to a site in time to effectively address a complaint.

County officials are located in the area where the nuisances occur and are better equipped to respond in a meaningful time frame, and to collect information related to particular events. In addition, they already have broad statutory authority to abate nuisances under NRS chapter 444 and to minimize the potential for these issues as they arise through the establishment of appropriate land use and industrial-siting criteria.

CHAIR MANENDO:

I do not know if Churchill County does not have the personnel, or if some of the responsibility can be shifted to them. It is something to consider.

KEVIN DICK (Director, Air Quality Management Division, Washoe County Health District):

Washoe County Health District has an existing regulation for odorous and gaseous contaminants. Our district board of health regulations, regarding air quality management, section 040.055, has been in place for some time. It was last amended in 1989. Our regulation has served us well, and provides for an appropriate and effective response to odor complaints. Last year, we responded to 22 odor complaints, and those represented a total of 17 percent of the total complaints to which we responded. We believe the approach we utilize is better than the approach proposed in the bill. We are concerned that if the bill is enacted as a statute, we will need to change our regulations and implement a

procedure that is administratively burdensome, cumbersome to implement and may reduce our effectiveness in resolving odor situations. This bill is designed to address a specific odor situation and is not responsive to the vast majority of situations to which we respond. Many odor situations are short-term and onetime events. The ability to respond to a situation may be lost if we are required to have a written notification. By the time it takes to receive and respond to such notice, it may be impossible to identify the source of the odor.

We have concerns about identifying the odor and the notification process. If the staff in the field cannot identify the source, it is unsure to whom we send the notification. If the complainant identifies the alleged source, and we identify a different source of the odor, that raises a question of whether we are required to send a notification to the source identified in the complaint or to the source we believe is the source of the odor.

We are concerned that a public agency could become a source of harassment from an individual citizen. We are concerned about due process with entry to a private residence. Requiring a formal notification response after an initial complaint is overkill. An odor situation may occur once and may not require further response. Our regulations account for this, and provide for two or more odor violations in a one-year period before we require a plan to correct the problem. There is still flexibility after two problems in a year. We do ambient measurements of known substances verified by a control officer when 75 percent of a group of eight or more people find the odor to be offensive. The definition of noxious odor in the bill could mean any odor reported by a complainant. The definition also limits noxious odors to usual places of occupancy. Does this mean a response if odors occur in public places or in private business settings? Local authorities are best suited to respond to odors due to their proximity and immediacy. The proposed regulations would require procedural and administrative changes to health district regulations, imposing additional cost for which we have no revenue source, and would decrease the effectiveness of our currently effective program. If you proceed with this bill, consider the idea Senator Lee presented, that health districts and air pollution programs already have effective programs to deal with the odor problem.

CHAIR MANENDO:

How many tests did you run around Bango Oil?

MR. ELGIS:
I will have to get the exact number for you.

CHAIR MANENDO:
Was it ten? Was it hundreds?

MR. ELGIS:
We have been to the area countless numbers of times. I do not have the exact number of samples with me. The problem is not being able to observe the odor. It does not make sense to take a sample of something that is not there. I do not remember how many times we drew a sample.

CHAIR MANENDO:
Did you do the tests at a time somebody smelled something?

MR. ELGIS:
Over the last two weeks, when we took the sampling, we did it whether our personnel smelled something or not. We took samplings downwind under what should be good conditions. We have never been able to observe what has been described to us.

CHAIR MANENDO:
If you can get back to me next week on the number of tests, I will see how many I want to see.

MR. ELGIS:
We will get a full report to you.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Stores Association):

Our concern is in section 1 and section 5. These open up the tobacco issue and multi-living arrangements. Any noxious odor could be a cooking odor. We are concerned an alleged complaint could become too powerful that it could paralyze a business or a life of an individual citizen.

TERRY GRAVES (Henderson Chamber of Commerce):
The Henderson Chamber of Commerce was concerned if a person walking by a restaurant would complain of a noxious odor. An odor is difficult to qualify and quantify. We agree that the bill is too broad in scope. It is inferring policing

power to individual citizens. A director would respond to multiple complaints. We are opposing the bill on policy issues. We are not opposing the residents of Churchill County resolving their issue.

GARY MILLER (Manager, Compliance and Enforcement, Clark County Department of Air Quality and Environmental Management):

If approved, this bill will affect local government, including Clark County. I will now read my written testimony ([Exhibit N](#)).

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):

We oppose S.B. 298. We do not contend the residents in Fallon are not having a problem. This bill is not the solution to the problem in Fallon. In NRS 202.450, subsection 5, dealing with nuisances:

Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse effect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

In rural Clark County, in 1963, a hog farm was established. The hog farm has one of the most aggressive recycling programs in the State. The food waste from the hotel casinos are fed to the hogs. Urban sprawl has encroached upon the hog farm. It would be reasonable to assume residents near the farm would find the odor offensive. For that reason, this bill might compromise the protection we currently have for agricultural operations if you pass this bill as it is written. Good agricultural practices we scientifically claim to operate could become invalid because of an odor problem. People moving to the country from the urban area tend to want to change their environment.

DAVID BOWERS (P.E., P.T.O.E., City Engineer, Department of Public Works, City of Las Vegas):

The bill is too broad. The Clark County Department of Air Quality Environmental Control has been resolving issues in numerous locations.

JUDY STOKEY (Executive, Government and External Affairs, Government and Community Strategy, NV Energy):

The bill is very broad. There are already regulations by the State and local governments that can regulate the nuisances. The bill is not specific and it makes no provisions for redress. While the bill defines noxious odors as being objectionable to the senses of an ordinary person and interfering with comfortable enjoyment of life and property, it provides no set of criteria by which to establish that definition. The bill makes no allowance for what might be an appropriate or expected odor based on location or processes, the application of fertilizer in an agricultural area or permitted industrial emissions. I will supply a letter for the record ([Exhibit O](#)).

KEN ARNOLD (Environmental Chief, City of Carson City):

I am responsible for the operation of the wastewater treatment plant. This bill opens up the possibility of a lot of complaints, and the cost of trying to remediate odors from a wastewater reclamation plant that was there prior to development around it. The \$40 million facility infrastructure is aging, but it cannot be moved. We are going to have to raise rates to improve the plant and bring it up to speed. Money spent to control an odor issue is not going into the renovation of the plant. Money will have to be spent for improvement of our National Pollutant Discharge Elimination System regulation permit.

CHAIR MANENDO:

Do you think the plant has a responsibility to the community to eradicate any odors?

MR. ARNOLD:

Yes, we are looking to do that. That is in the future upgrade phase of development on our plant. There is some funding from the State Revolving Loan Fund (SRF) to address a portion of the renovation. It would be devastating to have to correct the odor problem immediately, because money is needed for other things at the plant like keeping the water flowing through and treating the water.

CHAIR MANENDO:

Do you get a lot of complaints from neighbors?

MR. ARNOLD:

We have never had a complaint. People remark on it, but no one has called up to complain.

MIKE WORKMAN (Director, Lyon County Utilities Department):

I operate the water and wastewater systems in the Dayton, Mound House and Silver Springs area in Lyon County. We had to convince DEP the odors from NWP were not coming from the wastewater treatment plant. Each one of our wastewater facilities has a discharge permit issued by DEP. All our operators have a direct link to DEP. Whenever there is a problem, DEP works with our staff; they come out on site to rectify any problems. We do not have a health authority because we are a small rural county. There are over 50,000 people in Lyon County. We rely on DEP, and they rely on us. Our main facility in Dayton is called the Rolling A Wastewater Treatment plant, built in the lowest part of the system along the Carson River at the old Rolling A Ranch. Development occurred all around the treatment plant, and that does create issues. When a lagoon has a rollover condition, or if an odor scrubber is being maintained, foul odors come out of the treatment plant. It is remediated and fixed unless there is a long-term issue. We take steps to correct it. Last year we spent \$500,000 on foul-odor remediation and rerouting sewer around the neighborhoods. That is a significant amount of money for a small utility. We had a small number of complaints last year related to our wastewater treatment plant. I offered to take one of the complainants to the plant to show him what was happening. We showed him a log with hydrogen sulphide levels. That person sent out 300 door posters to the residents telling them they were going to die in their sleep because of our wastewater treatment plant. That is why this bill concerns me.

CHAIR MANENDO:

I will close the hearing on S.B. 298. We have Bill Draft Request (BDR) R-1113 which expresses opposition to designating certain public lands as wild lands and urges the Secretary of the Interior to rescind the order requiring that designation.

BDR R-1113: Establishes provisions relating to wild lands. (Later introduced as Senate Joint Resolution 12)

SENATOR RHOADS MOVED TO INTRODUCE BDR R-1113.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR MANENDO:

We have BDR 40-1114 requiring the payment of deposits and refunds of certain beverage containers sold in the State.

BDR 40-1114: Requires a refundable deposit on certain types of recyclable beverage containers. (Later introduced as Senate Bill 389)

SENATOR LEE MOVED TO INTRODUCE BDR 40-1114.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR MANENDO:

We will now go into work session.

MICHELLE VAN GEEL (Policy Analyst):

The first bill on the work session document ([Exhibit P](#)) is S.B. 119.

This bill was heard in Committee on February 23. It would expand the scope of the duties and powers of the executive director and the administrators of the Agency for Nuclear Projects by revising the definition of radioactive waste to include high-level radioactive waste, low-level radioactive waste, transuranic waste, spent nuclear fuel and certain other radioactive materials. The bill retains the current definitions of radioactive waste as it pertains to the Commission on Nuclear Projects. Would you note it was during testimony when Senate Bill 119 and also Senate Bill 121 were heard, and that's the second bill here. ... if the Committee chooses to process Senate Bill 121, section 2 of S.B. 119 should be deleted. Otherwise, they conflict. Do you want me to go through [S. B.] 121?

Senate Bill 121 was also heard on May [February] 23 [([Exhibit Q](#)) as a work session document]. It revises the definition of radioactive waste to include high-level radioactive waste, all that again, basically. This time it applies to the Nuclear Regulatory Commission rather than the Agency for Nuclear Projects.

[SENATE BILL 119](#): Revises provisions governing the Agency for Nuclear Projects. (BDR 40-249)

[SENATE BILL 121](#): Revises provisions governing the Commission on Nuclear Projects. (BDR 40-250)

SENATOR ROBERSON:

I would like to discuss the proposed amendment by Randi Thompson on both of these bills. It merits serious consideration. Ms. Thompson sent an e-mail which I will read.

I urge the Committee to hold a hearing on the potential economic benefits that can come from the Yucca Mountain facility, not as a long-term storage facility, which is an outdated idea, but as an interim storage site coupled with a world class research center that can develop technologies to generate power by reprocessing spent fuel and advance renewable energies. Using the completed Yucca Mountain facility, this center can chart the course of energy production for the next century. The Nevada energy park can develop new export industries, create thousands of long-term jobs, generate over \$1 billion annually to the State budget, and provide funds directly to Nevadans through a permanent trust fund.

Ms. Thompson is asking:

A report be provided to the Legislature and the Governor on new and emerging technologies that can reprocess commercial-spent nuclear fuel. Such report must include potential economic impacts the State could receive from using the infrastructure at Yucca Mountain as an interim storage facility for spent fuel and hosting the reprocessing facility.

We should consider this amendment, and we should schedule a hearing to discuss these issues.

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SENATOR LEE:

I do not agree with Ms. Thompson's amendment.

SENATOR LEE MOVED TO DO PASS S.B. 121.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS RHOADS AND ROBERSON VOTED NO.)

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SENATOR LEE MOVED TO AMEND BY REMOVING SECTION 2 AND DO PASS S.B. 119.

SENATOR PARKS SECONDED THE MOTION.

SENATOR PARKS:

If we consider the amendment suggested by Senator Roberson, we would have to do an interim study. Who would do the study? How would that be done? Would it require an appropriation, a contract or was it envisioned to be an interim study?

SENATOR ROBERSON:

I would be satisfied if we could hold off voting on these two measures. We could schedule a hearing to further discuss this concept brought by Ms. Thompson.

SENATOR MANENDO:

We need to get bills out of this Committee. Ms. Thompson is welcome to return and talk under public comments.

SENATOR ROBERSON:

Could we wait and vote at another opportunity.

SENATOR MANENDO:

We can always amend the bill on the Senate Floor after hearing her. I am not sure how backed up Legal is on amendments on bills already passed. She also has an opportunity to speak in the Assembly.

THE MOTION CARRIED. (SENATORS RHOADS AND ROBERSON VOTED NO.)

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MS. VAN GEEL:

The final bill on the work session this afternoon is Senate Bill 191, [another work session document ([Exhibit R](#)).] It was heard in Committee on March 16. Senate Bill 191 repeals the statutory provisions requiring that a person who operates a crematory for pets must also have a certificate of authority from the Nevada State Funeral Board to operate a cemetery for pets and operate a crematory on the premises of the cemetery. No amendments were offered on this bill.

[SENATE BILL 191](#): Revises provisions governing pet crematories. (BDR 40-979)

SENATOR RHOADS MOVED TO DO PASS S.B. 191.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR MANENDO:

There being no further business, the Senate Committee on Natural Resources is adjourned at 5:02 p.m.

RESPECTFULLY SUBMITTED:

Sandra Hudgens,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 287	C	Senator Rhoads	Written Testimony
S.B. 287	D	Connie Simkins	Written Testimony
S.B. 287	E	Connie Simkins	Sage Grouse Habitat Map
S.B. 287	F	Connie Simkins	Table Mountain Disc
S.B. 287	G	Connie Simkins	Sage Grouse Breeding Density Map
S.B. 287	H	Wes Henderson	Naco Resolution
S.B. 298	I	Senator McGinness	Written Testimony
S.B. 298	J	Don Mello	Written Testimony
S.B. 298	K	Lorraine Griffin	Written Testimony
S.B. 298	L	Lorraine Griffin	Attorney General Opinion No. 2009-01
S.B. 298	M	Sharon Boone	Written Testimony
S.B. 298	N	Gary Miller	Written Testimony
S.B. 298	O	Judy Stokey	NV Energy Letter
S.B. 119	P	Michelle Van Geel	Work Session Document
S.B. 121	Q	Michelle Van Geel	Work Session Document
S.B. 191	R	Michelle Van Geel	Work Session Document