



**MINUTES OF THE MEETING OF THE LEGISLATIVE COMMISSION’S
SUBCOMMITTEE ON INDUSTRIAL EXPLOSIONS**
(Nevada Revised Statutes 218.682)
March 6, 2002
Carson City, Nevada

The first meeting of the Legislative Commission’s Subcommittee on Industrial Explosions (*Nevada Revised Statutes* 218.682) was held on March 6, 2002, commencing at 8:10 a.m. The meeting was held in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada, and videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Pages 2 and 3 contain the “Meeting Notice and Agenda.”

SUBCOMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Randolph J. Townsend, Chairman
Assemblyman Bernie Anderson

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Dina Titus
Assemblywoman Kathleen A. Von Tobel

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Crystal M. McGee, Senior Research Analyst, Research Division
Risa B. Lang, Principal Deputy Legislative Counsel, Legal Division
Deborah Rengler, Senior Research Secretary, Research Division

MEETING NOTICE AND AGENDA

Name of Organization:	Legislative Commission’s Subcommittee on Industrial Explosions (<i>Nevada Revised Statutes</i> 218.682)
Date and Time of Meeting:	Wednesday, March 6, 2002 8 a.m.
Place of Meeting:	Legislative Building Room 4100 401 South Carson Street Carson City, Nevada

Note: Some members of the subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location:

Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks

Senator Randolph J. Townsend, Chairman

II. Summary of the Report on Industrial Explosions Prepared by the Legislative Counsel Bureau

Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau

III. Report on the Uninsured Employers' Claim Fund and the Impact Uninsured Employers Have on Nevada's Workers' Compensation System

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO, and Member, Advisory Council to the Division of Industrial Relations

IV. Report on the Status of Employees Injured by the Industrial Explosions at AeroTech, Inc., Las Vegas, Nevada, and at Depressurized Technologies International, Inc. (DTI), Minden, Nevada

Mathew Callister, Attorney at Law, Callister & Reynolds
Brian McCarthy, Attorney at Law, O'Farrill, Sayre & Chavez

V. Report on the Investigation of the Industrial Explosions at AeroTech, Inc. and DTI Conducted by the Division of Environmental Protection, State Department of Conservation and Natural Resources

Allen Biaggi, Administrator, Division of Environmental Protection
David Emme, Chief, Bureau of Waste Management, Division of Environmental Protection

VI. Report on the Investigation of the Industrial Explosions at AeroTech, Inc. and DTI Conducted by the Occupational Safety and Health Enforcement Section (OSHES), Division of Industrial Relations

Roger Bremner, Administrator, Division of Industrial Relations
L. Tom Czehowski, Chief Administrative Officer, OSHES

VII. Report on the Investigation of the Industrial Explosion at AeroTech, Inc. Conducted by the Clark County Fire Department

Earl A. Greene, Clark County Fire Chief, Clark County Fire Department
Richard Brenner, Fire Protection Engineer, Clark County Fire Department

VIII. Report on the Investigation of the Industrial Explosion at DTI Conducted by the East Fork Fire and Paramedic Districts

Tod F. Carlini, District Fire Chief, East Fork Fire and Paramedic Districts

IX. Public Comment

X. Adjournment

*Denotes items on which the subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Deborah Rengler at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at www.leg.state.nv.us.

OPENING REMARKS

Senator Townsend called the meeting to order. In his opening remarks, he thanked Assemblyman Bernie Anderson and Assemblyman Richard D. Perkins, Chairman, Legislative Commission, for answering the need to review this topic. Continuing, Senator Townsend called attention to the briefing binder titled "Legislative Commission's Subcommittee on Industrial Explosions, 2001-2002 Interim" (Exhibit A), which will provide a historical perspective and legal documentation for the subcommittee. He invited the members and audience to share their views regarding the subcommittee's future direction and ultimate goals.

Assemblyman Anderson indicated that he has been concerned for some time about the movement and shipment of hazardous materials in Nevada, particularly with regard to the state's regulation of industries that engage in such activities. He noted that Sierra Chemical is located within his Assembly district. In addition, his district contains a sizeable warehousing industry.

Continuing, Assemblyman Anderson provided the Subcommittee with a copy of an audit report concerning the State Fire Marshal Division, Nevada's Department of Public Safety, titled "Audit Report, State of Nevada, Department of Motor Vehicles and Public Safety, State Fire Marshal Division, 2001" (Exhibit B). Mr. Anderson reported that the audit reveals the state's inability to meet its obligations. He noted that the state would be better able to fulfill its responsibilities if the presence of businesses that engage in activities involving hazardous substances were known and if the appropriate agencies communicated more effectively with each other.

Mr. Anderson also expressed concern that employees who work with hazardous materials receive adequate training and are cognizant of the qualities of such substances. While businesses that engage in activities involving hazardous materials may not favor the safety precautions that have been established, it is important that inspections take place on a regular basis and workplace safety remain a priority. Ideally, relations between management and labor relationship should not be adversarial but should instead focus on maintaining a safe work environment. Further, Assemblyman Anderson favored strengthening the state's whistleblower statutes to protect more effectively those individuals who are willing to identify hazardous conditions within a community.

Concluding his remarks, Assemblyman Anderson summarized his expectations of the tasks before the Subcommittee, that is, to address: (1) the shipment of hazardous materials; (2) the possible creation of a mechanism to ensure that the appropriate officials are aware of the presence of such substances in the community; (3) the steps necessary to improve the safety records of businesses that engage in activities involving hazardous materials; and (4) enhancements to the existing whistleblower statutes.

Assemblywoman Von Tobel indicated that she shared many of the concerns raised by Assemblyman Anderson, especially with respect to the shipment of hazardous materials. She reported that shipments of hazardous materials travel through Indian Springs, Nevada, which is located within her district. Further, Ms. Von Tobel asserted that additional investigation is needed with respect to the AeroTech, Inc. explosion to explain more fully the cause of the incident and to determine whether the proper reports were completed.

Tom Stoneburner

Tom Stoneburner, Director, Alliance for Workers' Rights, Reno, Nevada, provided the Subcommittee with a packet of materials (Exhibit C) related to the Sierra Chemical explosion that occurred on January 7, 1998, consisting of the following documents:

1. A letter dated January 12, 1999, to United States (U.S.) Senator Harry Reid (D-Nevada) from Mr. Stoneburner, relating to regulation of the manufacture and distribution of explosives by the Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Department of the Treasury;
2. A letter dated January 19, 1999, to U.S. Representative Jim Gibbons (R-Nevada) from Mr. Stoneburner, together with a summary of the verbal statements of Sierra Chemical workers taken on June 23, 1998;
3. A map of the Sierra Chemical compound drawn by Gustavo Alcala;
4. A document titled "The United States Treasury Department, The Bureau of Alcohol, Tobacco and Firearms"; and
5. The prepared statement of Michael W. Morrissey, Assistant Special Agent in Charge, San Francisco Field Division, AFT, dated January 27, 1998, titled "Commission on Workplace Safety and Community Protection."

Mr. Stoneburner expressed frustration that past efforts to protect workers have proven ineffective. He agreed that the Subcommittee should review the manner in which the state currently regulates businesses that engage in activities involving hazardous materials. Continuing, Mr. Stoneburner suggested that such a review should specifically focus on: (1) the manner in which hazardous materials are moved into, processed, and stored in Nevada; (2) the state's methodology for regulating and tracking businesses that engage in activities involving hazardous materials; (3) identification of the agencies responsible for the regulation and tracking of such businesses; (4) each regulatory authority's specific area of responsibility; and (4) communication among these agencies. He anticipated that such a review would reveal opportunities to provide regulatory agencies with more effective tools with which to carry out their responsibilities. In addition, Mr. Stoneburner asserted that people who work for businesses that engage in activities involving hazardous materials need a safe venue for expressing concerns regarding safety issues without fear of reprisal.

Further, Mr. Stoneburner suggested that after the Subcommittee completes its review of the industrial explosion incidents, the appropriate regulatory agencies should be provided with a clear description of their respective responsibilities. He also emphasized the importance of conducting a follow-up review of the state's regulatory agencies to ensure that each such entity is fulfilling its responsibilities.

Concluding his remarks, Mr. Stoneburner expressed concern at the seeming acceptance within Nevada's communities that as workers are pressed to increase productivity, certain losses are inevitable. He reported that 51 Nevada employees lost their lives last year in work-related incidents and questioned how much people would be willing to spend to protect the health and safety of workers. Mr. Stoneburner asserted no loss of workers is acceptable.

SUMMARY OF THE REPORT ON INDUSTRIAL EXPLOSIONS **PREPARED BY THE LEGISLATIVE COUNSEL BUREAU**

Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, provided the Subcommittee members with briefing binders titled "Legislative Commission's Subcommittee on Industrial Explosions, 2001-2002 Interim" (Exhibit A).

**REPORT ON UNINSURED EMPLOYERS' CLAIM FUND
AND THE IMPACT UNINSURED EMPLOYERS HAVE
ON NEVADA'S WORKERS' COMPENSATION SYSTEM**

Danny Thompson

Danny Thompson appeared in his capacity as Executive Secretary-Treasurer, Nevada State AFL-CIO, and as a member of the Advisory Council to the Division of Industrial Relations (DIR), Carson City. Mr. Thompson reminded the subcommittee that as a result of the Pacific Engineering and Production Company (PEPCON) incident, Senate Bill 641 (Chapter 608, *Statutes of Nevada 1991*), which "regulates handling of hazardous materials," was enacted that established parameters for safe performance in the industry.

Mr. Thompson explained that workers' compensation is an exclusive remedy to law; that is, injured workers are limited to those remedies specifically provided in statute. Because workers' compensation is a forced system, the Legislature created the Uninsured Employers' Claim Fund to assist injured workers whose employers fail to provide proper industrial insurance coverage as required by law. He noted that with the advent of self-insurance, group self-insurance, and finally an open competitive market, it has become increasingly difficult to manage the Uninsured Employers' Claim Fund. While the Legislature historically has been sensitive to the needs of the counties and cities, allowing each to control its own destiny, the state is within its jurisdiction to intervene if the actions of a local government negatively affect the rest of the state.

Continuing, Mr. Thompson explained that the Advisory Council to the DIR consists of seven members appointed by the Governor: one from the general public, three from labor, and three from management. The Advisory Council does not set policy of the DIR; rather, it makes recommendations while working closely with the DIR's administration to ensure that all issues are addressed.

Mr. Thompson stated that the Advisory Council was unaware that DTI was conducting business in Minden, Nevada, until it received a report from the DIR on the recent accident. The activities of DTI and the impact of the accident at its Minden facility on the rest of the state were not fully understood until after the incident. Total charges to date relative to the DTI accident are \$429,724.69, and the DIR has reserved in excess of \$3,300,000. He pointed out that the actions of DTI have affected every employer in the state.

Continuing, Mr. Thompson acknowledged the Legislature's efforts to maintain a fair system of workers' compensation that provides adequate coverage for injured workers at a reasonable cost. He emphasized that the DIR was performing its duties as prescribed by law; however, there was no mechanism in place that would have provided the agency with knowledge of the company's existence. Mr. Thompson pointed out that Douglas County has no business license requirement, noting that such a mechanism might have alerted the DIR of DTI's operation. Continuing, Mr. Thompson expressed the Advisory Council's confidence in the DIR and noted that the agency's various sections, including the Industrial Insurance Regulation Section, the Mine Training and Safety Section, the Occupational Safety and Health Enforcement Section (OSHES), and the Safety Consultation and Training Section, report regularly to the Advisory Council.

In closing, Mr. Thompson commended the Subcommittee members for their efforts to address the issues raised by the recent industrial explosions. He noted that the subcommittee has an opportunity to recommend a mechanism that will allow the DIR to be better informed of business activities within the state. Should the Legislature determine that additional oversight is needed in this area, he offered the services of the Advisory Council as a cost-effective and experienced body to perform such a function.

Chairman Townsend questioned whether the Advisory Council would be making further recommendations to the subcommittee. In response, Mr. Thompson reported that the Advisory Council had not met specifically on this issue. He noted that at its last regular meeting, the Advisory Council received a report from L. Tom Czehowski, Chief Administrative Officer, OSHES. Mr. Thompson reiterated that no statutory mechanism currently exists that would have alerted the DIR to DTI's existence. He pointed out the DIR cannot be expected to effectively fulfill its responsibilities if it is unaware of a business' existence. Continuing, Mr. Thompson suggested that a mechanism be established in statute to ensure that the DIR is aware of the existence of businesses operating in Nevada so it can

identify any health and safety issues that should be addressed. He acknowledged that DTI had failed to adhere to Nevada law. Further, it might be necessary to establish additional procedures to identify other businesses that are determined to operate outside the law. Mr. Thompson stressed a mechanism that permits OSHES to identify such a need is a necessity. Clearly, DTI was operating outside of the law; management was not maintaining workers' compensation coverage and was not adhering to the law in any regard. If a person is determined to sidestep the law, additional methods must be found to identify such individuals.

Responding to a question from Chairman Townsend, Mr. Thompson reported the Advisory Council had not received an in-depth report on the AeroTech incident, and his personal knowledge had been garnered through newspaper accounts. He noted that DIR staff would provide specific information on the AeroTech incident.

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**REPORT ON THE STATUS OF EMPLOYEES INJURED BY THE
INDUSTRIAL EXPLOSIONS AT AEROTECH, INC., LAS VEGAS, NEVADA,
AND AT DEPRESSURIZED TECHNOLOGIES, INC. (DTI), MINDEN, NEVADA**

Chairman Townsend introduced the next two speakers as members of the law firms representing employees injured at the DTI facility.

Mathew Callister

Mathew Callister, attorney at law, Callister & Reynolds, Las Vegas, noted that most often the newest and poorest Nevadans are victims of industrial accidents. He introduced three of the victims: Raul Gonzalez, Elias San Juan, and Cecilio San Juan. Not present were Susano Lopez, who suffered severe burns, and Jaime Gonzalez, who lost his life. Mr. Callister shared his views regarding exclusive remedy with respect to workers' compensation, delays in obtaining assistance, inherently dangerous workplace environments, and issues that the Subcommittee should address, covering the following points:

- Referencing the document titled "Inspection Report on Depressurized Technologies International, Inc." contained in the briefing binder (Exhibit A, Tab G), he noted that the Employers' Insurance Company of Nevada (EICON), formerly known as the State Industrial Insurance System, is managing claims relative to the DTI incident.
- It is his understanding that criminal indictments have been issued involving the owner.
- Referencing Mr. Thompson's remarks, he noted that workers' compensation is an exclusive remedy to law in Nevada for industrial accidents.
- Exclusive remedy is ineffective with respect to nonparticipating employers. It is unfair to allow an employer who operates in an unlawful manner to shift its financial burdens to those businesses that participate in Nevada's workers' compensation system.
- Given the specifics of the DTI accident, the remedies available to the affected workers are insufficient. Other jurisdictions, including Arizona and California, have created exceptions to exclusive remedy when the conduct of the employer is willful and intentional, particularly when the employer's actions are linked to inherently dangerous workplace environments.
- Dangerous workplace environments such as those at the Nevada Test Site and PEPCON have existed in Nevada for many years.
- Contrary to popular perception, Nevada does not have a lax regulatory environment. However, the state's large open spaces make it relatively easy for businesses to establish operations without the knowledge of government officials and to employ non-English speaking workers who may be unable to read warnings.
- To date, Nevada has paid in excess of \$1 million for medical expenses as a result of the DTI incident. In addition, the five men injured and killed in the DTI incident have families in Nevada and Mexico, and at least 25 of their dependants that have been dramatically affected by the incident.

- Although community members offered assistance to the victims of the DTI accident, the 25 to 30 family members who were financially dependent on the victims experienced a 60-day delay in obtaining temporary assistance.
- Nevada's system of workers' compensation protects all employees, regardless of their immigration status. However, a perception of problems may influence an employee's ability to access the system.

Concluding his remarks, Mr. Callister urged the subcommittee to:

1. Reconsider Nevada's exclusive remedy provisions;
2. Take whatever action is necessary to ensure that employees who work in dangerous environments, including nonnative, non-English speaking persons, are able to quickly access the workers' compensation system and applicable public assistance programs;
3. Review the level of bilingual staff within the workers' compensation system; and
4. Ascertain and address any immediate difficulties that might arise from an injured employee's immigration status and impede his or her ability to access the workers' compensation system.

Referencing Mr. Thompson's remarks, Assemblyman Anderson agreed that one of the issues is the presence of hazardous activities within the state that are unknown to the appropriate regulatory agencies. He observed that the primary concern of many immigrants is providing for their families, and they will often accept any job. Mr. Anderson asked Mr. Callister to share his thoughts regarding what steps the state could take to ensure that immigrants are comfortable in dealing with a government unfamiliar to them and to encourage such workers to report hazardous work conditions to the appropriate officials. Mr. Callister acknowledged that immigrants have historically been reluctant to participate in their new government. He complimented state officials for the assistance they provided to the accident victims. However, someone must initiate contact. Mr. Callister pointed out that a review of the list of victims' names should reveal whether the individuals might require assistance in accessing the system. The victims of the AeroTech, Inc. incident are Filipinos who speak Tagalog; those at DTI are Mexican Americans. The victims of the DTI incident experienced a 60-day delay in receiving assistance. In his view, it should have been anticipated that the victims would require assistance to access the system. He acknowledged the efforts of people within the community who assisted the victims and their families.

Brian McCarthy

Brian McCarthy, attorney at law, Callister & Reynolds, Las Vegas, is also associated with the California office of O'Farrill, Sayre & Chavez, which has a long history of immigrant protection. Mr. McCarthy stressed that the workers in both the AeroTech and DTI incidents handled known dangerous chemicals that are highly volatile substances. These workers did not receive any training or warnings regarding to the volatility of the products with which they were working.

Chairman Townsend reiterated that the subcommittee is addressing two separate incidents:

1. The DTI incident occurred in a northern rural community and involves the death of one worker, the serious injury of other employees and their long-term needs, and criminal allegations against the owner of the facility.
2. In southern Nevada, an explosion occurred at AeroTech. While the incident was tragic, it could potentially have demolished the surrounding community, including residences.

Continuing, Chairman Townsend cautioned that the Subcommittee must focus on the needs of the entire state rather than solely on issues that surfaced as a result of a single incident. He questioned whether certain mechanisms should have alerted state or local agencies of DTI's existence. He speculated that a business license that requires disclosure of the nature of the operation might alert the appropriate state and local authorities to the existence of potentially dangerous work environments so that proactive measures could be taken to ensure accidents do not occur. He encouraged interested parties to give serious consideration to this issue and to share their suggestions as to potential mechanisms that would enable officials to initiate appropriate preventative measures to prevent industrial accidents.

Responding, Mr. Callister offered the following suggestions for the subcommittee's consideration:

1. Referencing the findings contained in the document titled "Report on the Industrial Accident at Depressurized Technologies, Inc." (Exhibit A, Tab F), Mr. Callister pointed out that DTI was not subject to the Chemical Accident Prevention Program (CAPP) of the Division of Environmental Protection (DEP), State Department of Conservation and Natural Resources (SDCNR), because the facility did not handle any highly hazardous substances. He suggested that the Subcommittee review the list of substances that are currently identified as highly hazardous.
2. In addition, Mr. Callister noted that businesses that generate hazardous waste must obtain an identification (ID) number from the U.S. Environmental Protection Agency (EPA) and adhere to specific handling, labeling, and storage requirements. He suggested that a mechanism that required the federal government to share information regarding all EPA ID holders with the state could alert state and local officials to the existence of businesses that engage in hazardous activities.

Chairman Townsend questioned whether there is a prohibition against the EPA sharing information regarding EPA ID holders with local agencies. He asked the subcommittee's legal staff to determine whether certain federal agencies are prohibited from sharing information with other government agencies. Chairman Townsend noted that over the years, there has been a great deal of debate relative to weighing privacy concerns against public protection. He suggested that if there is a prohibition against the sharing of data among government agencies, then the subcommittee could again debate the issue to determine whether eliminating the prohibition might benefit the public.

Referring to Assemblyman Anderson and Assemblywoman Von Tobel's concerns regarding the transportation of hazardous materials, Chairman Townsend observed that a truck could travel from Utah to California, through Nevada, without the state being notified of its contents. Continuing, he asserted that if materials are deposited within the State of Nevada, the appropriate government agencies should be advised. Chairman Townsend questioned whether regulations exist relative to the transportation of hazardous materials from other states that are delivered to Nevada businesses. Mr. Callister indicated that he would defer response to Senator Townsend's question to representatives of the agencies that attempt to regulate such shipments. In his view, a more serious issue arises when a new business intentionally seeks to avoid participation in Nevada's regulatory scheme. He also pointed out that government agencies that are understaffed may lack the time to perform requisite reinspections, as has been suggested in the AeroTech accident. Mr. Callister recommended that the subcommittee focus its efforts on addressing the issues raised by the inherently hazardous businesses that exist in Nevada. Further, he suggested that the appropriate government agencies maintain an appropriate level of regulation for such businesses from both safety and transportation perspectives.

Assemblyman Anderson commented on the Audit Report of the State Fire Marshal Division (Exhibit B), which evaluated the Division's processes for identifying businesses storing hazardous materials and renewing hazardous material permits. In his view, businesses have a responsibility to the communities in which they operate to disclose the existence of any materials they deem to be dangerous. He noted that a primary goal of the subcommittee is to establish a mechanism to identify businesses that attempt to avoid adherence to Nevada law. Further, Mr. Anderson suggested that the Legislature must provide the State Fire Marshal Division with the necessary staff and tools to properly carry out its responsibilities.

Mr. Callister agreed that the state must identify and appropriately regulate businesses that engage in potentially hazardous activities. He pointed out that the Legislature determines what substances are categorized as hazardous or highly hazardous. Further, the Legislature has a responsibility to adequately fund regulatory agencies to prevent industrial accidents. Mr. Anderson pointed out that while most people would not consider a single aerosol can as hazardous, large quantities—as demonstrated by the DTI incident—could pose a significant danger. He suggested that a review be conducted of substances that either are or could be categorized as hazardous and potentially hazardous substances. Included in the review should be consideration of the amount of a substance that might pose a significant health or safety danger.

Mr. McCarthy recalled a conversation with East Fork Fire Chief Terry Taylor wherein he indicated if a line of mousse hair product was placed on a countertop and lit, it would ignite, which illustrates the volatility of many household products.

Assemblywoman Von Tobel observed that DTI did not have a business license and questioned whether it had paid its business activity tax and if Nevada's Department of Taxation was aware of its existence. Chairman Townsend said it is his understanding that DTI did not pay any fees or taxes, which resulted in the filing of criminal charges. There is a perception that DTI might have been over-regulated in another state and found it could operate undetected in Nevada. He cautioned that care should be taken to ensure that the quantity and type of substance be considered in reviewing categories of hazardous and highly hazardous substances. For instance, a superstore that stocks products in aerosol cans should not be subject to the same regulations as a degassing facility that engages in potentially hazardous activities. Rather, the inherently dangerous nature of a business should be identified and regulated. In conclusion, Chairman Townsend pointed out that all Nevada employers contribute to the Uninsured Employers' Claim Fund to pay for the DTI incident, and Nevada is losing revenue that is needed in other areas.

Chairman Townsend invited the DTI accident victims to describe the training they were given, to comment on the fact that the manuals were written in one language, and to explain their inability to understand the inherently dangerous nature of their work. Mr. McCarthy indicated that the witnesses were reluctant to speak before the subcommittee. Chairman Townsend observed that the presence of the victims at the meeting enabled the subcommittee and the public to more fully appreciate and envision the impact of the industrial insurance accident. Further, he asserted that the state has an obligation to ensure that Nevada's employees are provided with a safe working environment and an opportunity to succeed.

Mr. Callister indicated he would provide the subcommittee staff with a summary of the states that have considered alternative approaches to the exclusive remedy. Concluding his remarks, he expressed the victims' appreciation to the subcommittee members, EICON, and the workers' rights groups and communities that offered assistance.

Chairman Townsend invited the injured workers to appear before whichever committees might consider these issues during the 2003 Legislative Session.

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**REPORT ON THE INVESTIGATION OF THE INDUSTRIAL
EXPLOSIONS AT AEROTECH, INC. AND DTI CONDUCTED BY
THE DIVISION OF ENVIRONMENTAL PROTECTION, STATE
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

Chairman Townsend asked representatives of the DEP to share their thoughts regarding potential gaps in procedure that enabled DTI to operate without the knowledge of the state.

Allen Biaggi

Allen Biaggi, Administrator, DEP, SDCNR, Carson City, provided an overview of the applicability of environmental regulations and the involvement of the DEP with respect to the DTI facility in Minden and AeroTech, Inc. in Las Vegas. Mr. Biaggi read into the record a prepared statement (Exhibit D) outlining the recycling process at the DTI facility. Continuing, he stated that DEP is responsible for enforcing the CAPP, which was implemented in response to the PEPCON explosion in 1988 and the Pioneer chlorine release in 1991. The CAPP requires facilities that use highly hazardous substances to register with the DEP, implement a rigorous safety program to identify and mitigate potential hazards, and establish an emergency response program. This program was modified to include facilities that manufacture explosives in response to the Sierra Chemical explosion in 1998. While DTI was not subject to the CAPP because it did not handle any highly hazardous substances in excess of the threshold quantities specified in Nevada statute, it was required to follow various federal and state hazardous waste regulations. In general, such regulations manage and track hazardous waste from its point of origin to the disposal site.

Mr. Biaggi noted that hazardous waste is a subset of the overall issue of hazardous materials. The environmental programs at the federal and state levels only address issues related to hazardous waste. He noted that the issue of hazardous materials was raised earlier in the meeting and asserted that accurate information is needed not only on hazardous waste, but also the use of hazardous materials.

Continuing, Mr. Biaggi stated that hazardous waste regulations are complicated by a number of exemptions:

1. Regulations only apply to waste materials and not to raw chemical or intermediate products;
2. Hazardous waste derived from households is exempt; and
3. To encourage reuse and recycling, exemptions apply when hazardous waste is recycled.

Chairman Townsend questioned if there are any waste management companies in the country that accept aerosol cans from household recycling programs.

David Emme, Chief, Bureau of Waste Management, DEP, SDCNR, Carson City, responded that aerosol cans are sometimes collected in household hazardous waste collection programs. Such programs may be one-day events to allow individuals to deliver their household hazardous chemicals to a central location so that they might be managed properly. In addition, empty aerosol cans are collected in some curbside recycling programs, allowing the steel to be recycled.

Assemblyman Anderson asked if the aerosol cans processed by DTI were primarily improperly manufactured in the industrial process. Mr. Emme said DTI worked with a mixture of the two sources of waste: (1) mislabeled or off-spec products from the industrial source that could not be sold; and (2) household hazardous waste collection events, mostly from California.

Chairman Townsend noted there appeared to be a recurring theme of products made elsewhere being deposited in Nevada.

Senator Titus asked if such recycling facilities were common around the country. Chairman Townsend replied there is at least one in California. Mr. Emme said hazardous waste recycling is not unique; there are other facilities around the country. Senator Titus said the subcommittee should review the regulations in other states where these facilities are located. Mr. Biaggi replied that Nevada has gone one step beyond the federal regulations in requiring facilities that recycle hazardous waste to obtain a written determination of recycling prior to commencing operations. Mr. Biaggi agreed that reviewing the practices of other states in this area might identify alternative mechanisms that could be used to strengthen Nevada's regulation of facilities that recycle hazardous waste.

Ray Bacon, Executive Director, Nevada Manufacturers Association, Carson City, interjected that there are numerous recycling facilities located in the Northeast United States.

Continuing, Mr. Biaggi reported that DTI submitted notification forms and an application for a written determination of recycling to the DEP. In February 2001, DTI obtained an EPA ID number. A public notice was published by DEP, but no objections were received during the 45-day comment period. The DEP issued the written determination of recycling to DTI on June 12, 2001. On August 13, 2001, the DTI facility was inspected, where technical violations relating to the Contingency Plan and employee training records were noted. The fire and explosion occurred on September 17, 2001. The DEP staff completed the inspection report on September 26, 2001, noting the circumstances of the fire. The Written Determination of Recycling was suspended and a Finding of Violation and Order was issued to DTI on November 29, 2001. An enforcement conference was held with facility representatives on December 17, 2001. The DEP is currently negotiating an administrative penalty.

Referring to an OSHES document titled "Inspection Checklist (3)" dated October 15, 2001, under Tab G of Exhibit A, Assemblyman Anderson noted Item 4, "Referral of potential safety/health problems to other agencies" was checked "no." Mr. Biaggi said he could not comment on any DIR action. Continuing, Mr. Anderson questioned whether the DIR shared with DEP any information regarding potential problems identified. Mr. Emme said DEP and DIR work together in some instances. The issue of communicating across agency lines is an ongoing problem that needs further work. Mr. Anderson stated the even though DEP regulates the back end waste product, the existence of substances that produce the waste is a problem that requires closer attention.

Continuing his testimony, Mr. Biaggi discussed DEP's involvement with the AeroTech, Inc. facility located in Las Vegas. The AeroTech, Inc. facility used hazardous materials, including ammonium perchlorate, as ingredients in their process but did not, to DEP's knowledge, generate hazardous waste and therefore was not subject to those regulations. While ammonium perchlorate is listed as a highly hazardous substance in statute, the amount reportedly

handled at the facility was well below the threshold quantity.

As a result of the explosion at Sierra Chemical Company's facility near Reno in 1998, the statutory provisions pertaining to the CAPP were amended by the 1999 Legislature to include facilities that manufacture explosives for sale. The State Environmental Commission adopted implementing regulations on February 15, 2001, requiring such facilities to register with the CAPP. The DEP sent out notices and attempted to identify prospective facilities using the State Fire Marshal's database for businesses with hazardous materials permits as well as discussions with OSHES staff and local building and planning officials. Through these efforts, the AeroTech, Inc. operation was not identified and the owners did not register as an explosives manufacturing facility.

On October 15, 2001, a fire and explosion occurred at the AeroTech, Inc. facility. Mr. Biaggi reported that DEP staff investigated the incident in an effort to determine the applicability of the CAPP to AeroTech, Inc.'s process. Initially, it was unclear whether model rocket motors met the statutory definition of explosives. This has been a matter of controversy between the model rocketry industry and the ATF. The ATF recognized the potential hazards of the hobby in a briefing paper titled "Hi Power Rocketry" issued February 25, 1997. In 1998, the ATF enacted regulations pertaining to the manufacture and storage of certain high-powered model rocket motors as explosives, specifically including ammonium perchlorate composite propellant on the list of explosive materials that the ATF publishes annually.

After the AeroTech, Inc. fire, Mr. Biaggi reported that the DEP staff notified company representatives of the applicability of the CAPP to their process, the requirements to obtain a permit if the facility proposed to rebuild or relocate in Nevada, and of the facility's liability for past due program fees since it had failed to register previously. AeroTech, Inc.'s owner disputes the applicability of the CAPP, claiming the rocket motors are not explosives, and has refused to pay past due fees. Mr. Biaggi stated that DEP has issued a Notice of Violation seeking fees and penalties. The Notice has been appealed, and an administrative hearing is pending.

Mr. Biaggi revealed that even if the AeroTech, Inc. facility had registered as an explosive manufacturer, the DEP would not have had the capability of performing a thorough inspection. Due to the highly specialized nature of explosives manufacturing operations, the DEP intends to execute a contract with an engineering expert to review plant designs and conduct facility inspections.

Senator Titus asked for clarification on the definition of explosives and whether regulations or statutes need amendment. Mr. Biaggi informed the subcommittee that the listing of hazardous substances and threshold quantities are contained in statute, not regulation. He recommended that the listing be removed from statute and placed in regulation in order that the DEP can respond in a timelier manner to these types of situations. Concerning the actual definition of explosives, Mr. Emme expressed his opinion that changes are necessary. The definition in statute is general, and he preferred having the ability to define more specifically in regulation what is considered an explosive, which would have prevented any dispute with AeroTech, Inc. Senator Titus recommended allowing the DEP to make changes to those threshold amounts through regulations instead of returning to the Legislature. She opined that DEP is the expert and should be able to update regulations as materials and technologies change. Mr. Emme agreed; the data is technical and requires a consistent effort to maintain a current list of chemicals and the associated threshold quantities. Mr. Emme voiced his opinion that this should be accomplished in regulation.

Chairman Townsend posed a hypothetical situation regarding a new business registering to manufacture explosives, asking who is responsible for the initial evaluation of that facility prior to beginning operations and subsequent follow-up inspections. Mr. Biaggi said there are federal, state, and local requirements. If the facility is subject to the CAPP, there are requirements local governments have with regard to the site of that explosive manufacturing operation. Chairman Townsend asked if Clark County followed those regulations concerning AeroTech, Inc. Mr. Biaggi said the regulations apply to new facilities coming into a community. It is his understanding that AeroTech, Inc. had been at that location for many years. With regard to state jurisdiction and oversight, the DEP has the responsibility for overseeing explosive manufacturing facilities through its CAPP, conducting the necessary inspections, ensuring appropriate safety and training procedures, and verifying emergency response capabilities. The federal oversight involves the ATF statutes and regulations.

Returning to the subject of DTI, Chairman Townsend asked when it applied for the permit from DEP. Mr. Biaggi said the public notice informs the community that an application for a permit for recycling of hazardous waste had been submitted. He reported that DEP does not send notification to any other agency regarding that permit

application, although that would be a good recommendation since better coordination at the state and local levels is needed. He said it is his understanding that there is an ongoing effort among the DIR, DEP, and the State Fire Marshal Division to ensure that proper notification occurs. Chairman Townsend said he expected to see a number of opportunities, which would permit all agencies involved to receive notification to facilitate any action deemed appropriate. Further, Chairman Townsend requested that all the agencies involved in public protection provide a list of recommendations for amending regulations or statutes. Mr. Biaggi reiterated that such efforts are underway, and it was his understanding that those agencies could be available to report on their progress.

Acknowledging that AeroTech, Inc. has been in existence for some time, Chairman Townsend asked if there was any evidence of growth or expansion. Mr. Biaggi deferred to the Clark County Fire Department to answer that question. It is Mr. Biaggi's understanding that the community grew around the AeroTech, Inc. facility.

Senator Titus complimented Mr. Biaggi on DEP's ability to inspect a facility and establish a program for accident prevention and safety prior to initial operations. Mr. Biaggi remarked that if there is an accident, DEP is not involved in that investigation unless specifically requested. Senator Titus questioned how DEP might play an enhanced role in the investigation process after an accident, which could result in improved prevention of such incidents. Mr. Biaggi said the statutory authorities for DEP investigating an accident are limited. He suggested that the statutes be amended in the next legislative session to address that situation and allow DEP to perform independent investigations of CAPP-related facilities in order to ascertain what went wrong and how similar incidents might be prevented in the future. Currently in statute, there is an allowance for the Governor to call special commissions, which have worked effectively with the Commission on Workplace Safety and Community Protection, known as the Clark Commission, on the explosion at Sierra Chemical and the Henderson Commission after PEPCON, but those tend to move slowly. The DEP asked that additional investigative mechanisms be placed in the CAPP statutes.

Mr. Emme added that accident investigation is extremely technical, requiring qualified investigators to review the engineering, process, and safety. Since DEP is entirely a fee-funded program, it currently does not have the resources to perform those investigations. Senator Titus questioned if DEP's enforcement authority is clear when a violation or imminent threat is found during an inspection and/or while working on a safety plan. Mr. Emme said the CAPP provides significant authority to issue notices of violation and seek penalties. However, DEP does not have the ability to close a facility or issue a stop order if an imminent threat is found. In the air quality program, DEP can close a facility for dust violations but does not have similar authority in the CAPP. Senator Titus noted that the imminent threat could be much greater. Mr. Emme agreed. Continuing, Senator Titus said DEP should be armed with the necessary tools to work effectively.

Assemblyman Anderson reiterated that DEP wants statutory authority to perform accident investigations, but as a fee-funded agency, does not have the ability to conduct those evaluations. An increase in funding from the state would be needed for the potential of performing investigations without waiting for a Legislative Commission meeting or the Governor's office to appoint a commission. Mr. Biaggi stated that a policy decision was made at the state level to have the CAPP funded by the industries that it regulates. The fees for this program are relatively substantial in order for DEP to have the appropriate staff and expertise. When the program is expanded, the resources need to be available to fund the expansion. Performing investigations is a technical endeavor, and resources are required to support those as they occur. Mr. Anderson said a mechanism is needed to spread the fees and costs for investigations of these potential violations over the entire industry. Mr. Biaggi agreed that would be one option; another method would be to establish one-time fees that would be held in reserve in the event of an incident and used for the investigation at that time. Mr. Anderson suggested that when DEP found a violation, a certain percentage of that fine could be held in reserve. Mr. Emme clarified that resources are needed to investigate accidents and determine their cause; DEP already performs inspections with existing staff. In the rare circumstance where an accident occurs, a mechanism is required to facilitate further investigation, possibly accomplished with a contingency contract.

Chairman Townsend clarified the recommendations presented by Mr. Biaggi and Mr. Emme as follows:

1. To set aside reserve funds, rather than an ongoing fee, for investigations; and
2. Permit the state agency to subcontract specialists for these investigations.

Continuing, Chairman Townsend asked whether current regulations outline how inspections are conducted and if any prior notification is given to the facilities. Mr. Biaggi said DEP strives to maintain the expertise to evaluate complex

chemical industrial facilities, which has resulted in a talented staff of engineers who perform those tasks. Working with structured checklists, DEP staff typically work in pairs while conducting the rigorous CAPP inspections, which usually take from one to four days. The facility owner/operator is responsible for compliance. The inspectors review records, using any means available to ensure compliance. Mr. Emme stated that in most cases, the facilities are not called prior to inspection, except for remote mine sites.

Assemblywoman Von Tobel requested a list of the fees and fines with details on the types of businesses paying them. Ms. Von Tobel said that before discussing an increase in funding, it is important to know what is being paid, who is paying it, an estimate of a one-time fee to increase investigation capabilities, and who would be affected. Mr. Biaggi said the fee increase is just one option; there are other alternatives that could permit increased responsibilities for DEP concerning accident investigations. Further, Mr. Biaggi noted that as a member of the Executive Branch, he needs to follow the recommendation of the Governor for no fee increases. From that perspective, he could not advocate an additional fee increase at this time. Chairman Townsend acknowledged Mr. Biaggi's concern and assured him that the subcommittee is only seeking information.

Assemblyman Anderson asked for clarification that when a fine is levied against a business for violations, it is paid or challenged. Mr. Biaggi said that would depend on the program. A notice of violation is appealed to the State Environmental Commission and may progress to the district court. In the CAPP, a violation is initially appealed to the DEP Administrator. Mr. Anderson queried what percentage of imposed fines is actually collected. Mr. Biaggi stated that DEP loses few of its cases and maintains a satisfactory enforcement record. The DEP expects facilities not only to pay the fines, but also to implement any corrective actions recommended. In answer to Mr. Anderson's question related to determining the validity of inspection recommendations, Mr. Biaggi said rarely does he as the administrator stop a notice of violation and imposition of appropriate fines. Mr. Emme said CAPP participants exceed a 90 percent compliance rate based on the number of inspections performed versus noncompliance exhibited.

**REPORT ON THE INVESTIGATION OF THE INDUSTRIAL EXPLOSION AT
AEROTECH, INC. AND DTI CONDUCTED BY THE
OCCUPATIONAL SAFETY AND HEALTH ENFORCEMENT SECTION (OSHES), DIVISION OF
INDUSTRIAL RELATIONS**

L. Tom Czehowski

L. Tom Czehowski, Chief Administrative Officer, OSHES, DIR, DBI, Henderson, Nevada, noted that OSHES is mandated to enforce the Federal Whistleblowers Protection Act of 1989, Pub.L. 101-12, 103 Stat. 16 (April 10, 1989) and specifically those sections that address discrimination or retaliation on the part of or against an employee regarding the safety or health issue. To substantiate a complaint, a full investigation is performed, interviewing the employer and employees. If the case is deemed to have merit, a settlement conference is scheduled and/or the complaint will be filed with the court.

Assemblyman Anderson asked approximately how many complaints OSHES receives. Mr. Czehowski said he had one full-time employee in Las Vegas and one person in Reno dedicating one-third of her time handling discrimination complaints, with seven open cases. Chairman Townsend asked how many complaints are substantiated. Mr. Czehowski reported that approximately 10 percent of the complaints received prove to be meritorious. In Fiscal Year (FY) 2001, OSHES reviewed 1,300 cases involving complaints, discrimination, and referrals. The majority are related to health and safety issues and a small portion dealt with discrimination. Mr. Czehowski offered to provide specific information at the next meeting. Chairman Townsend asked that the information be detailed by industry within the northern and southern geographic regions.

Mr. Czehowski remarked that 20 percent of his field staff is bilingual, speaking Spanish. In the case of AeroTech, Inc., when OSHES sent a Spanish-speaking inspector, it was discovered that the employees were Filipino, so OSHES sent another inspector who also spoke Tagalog. Chairman Townsend asked if OSHES has difficulty finding bilingual employees. Mr. Czehowski indicated it is difficult to find qualified bilingual safety inspectors and industrial hygienists. Chairman Townsend inquired as to the OSHES turnover rate and if recruitment difficulties needed to be addressed by the Legislature. Mr. Czehowski reported that as a result of the last nationwide recruitment effort, OSHES is now fully staffed.

Continuing, Mr. Czehowski reported the OSHES receives its mandates from Chapter 618 of the *Nevada Revised Statutes* (NRS), "Occupational Safety and Health," as well as from the *Code of Federal Regulations* (CFR), Title 29 Labor, Chapter XVII Part 1910 "Occupational Safety and Health Standards." Commenting on the explosion inspections, he said OSHES covers the explosive regulations as well as the ammonium perchlorate regulations under NRS Chapter 618, which also authorizes OSHES to perform all occupational safety and health enforcement. The OSHES also enforces the asbestos regulations. If a plant is to be built or substantially modified, plans must be submitted to OSHES. Regarding training of employees, OSHES must be notified at least ten days prior to any instruction to permit OSHES representatives to attend. The credentials of the trainer must be submitted for prior approval by OSHES, which will issue a certificate of competency under the explosive regulations.

Referring to DTI, Assemblyman Anderson noted that it appeared that the owner did not intend to follow any regulations or rules. Mr. Anderson questioned how OSHES becomes aware of the existence of a facility. Mr. Czehowski reported that DIR's Administrative Services Unit captures Nevada's labor data and transmits it to the Bureau of Labor Statistics, U.S. Department of Labor. Continuing, he said there is a complex program that incorporates both the Bureau of Labor Statistics and Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, information. However, if a facility is operating within Nevada and is avoiding appropriate notification, OSHES may not be aware of its existence. Mr. Anderson reiterated his question, placing emphasis on the lack of information sharing among interested agencies. He inquired as to what still needs to be addressed statutorily to facilitate a sharing of information that will permit OSHES to perform its job in terms of workplace safety. Mr. Anderson queried whether Nevada should create new standards specific to the State of Nevada rather than utilizing only federal OSHA standards.

Roger Bremner

Roger Bremner, Administrator, DIR, Carson City, said there has been a long-time need for better communication among state agencies. Governor Kenny C. Guinn and his staff have recognized this need and created a task force that is preparing a database that will eventually be available for all state agencies to access. This information will contain certain data elements that will allow those agencies to perform their jobs more effectively. Confidentiality issues are being investigated as well as any federal requirements concerning barriers that need to be removed. Assemblyman Anderson commented that in order for the subcommittee to perform its duties, the Governor's task force should be encouraged to have something in place for recommendation by the third meeting. Mr. Bremner remarked that statutory changes might not be required if the task force completes its assignment before the 2003 Legislative Session.

Continuing, Mr. Czehowski commented that OSHES conducts the investigations for any accident involving employees, catastrophic incidents, occupational fatalities, and significant events as defined by federal regulations. During investigations and the inspection process, OSHES has the authority to close an employer who is not cooperative when OSHES determines there is imminent danger. Assemblyman Anderson asked if that occurs often. Mr. Czehowski reported he was aware of only two instances where an employer reluctantly addressed violations to avoid closure.

Assemblyman Anderson reiterated a comment made by Mr. Stoneburner regarding 51 deaths. Mr. Czehowski said he could not relate to that number. While all fatalities are reported, a heart attack on the job may not be considered occupational. Only those fatalities involving an accident, illness, or injury that results from a violation of OSHA standards will be considered occupational deaths. While there may have been 51 deaths, the actual number of fatality investigations performed by OSHES in FY 2001 was eight. Highway accidents may be reported as an occupational fatality but are exempt from OSHES jurisdiction.

To clarify for his own understanding, Mr. Anderson posed a hypothetical incident where an overweight worker picks up and carries boxes, subsequently experiencing a heart attack. Mr. Czehowski said such a death must be reported within eight hours. If there were any question as to whether it should be considered an occupational fatality as opposed to a heart attack on the job, OSHES would obtain the coroner's report. Based on the coroner's conclusions, OSHES would determine whether further investigation was required.

Mr. Bremner interjected there were four mine-related accidents that the DIR's Mine Safety and Training Section investigated during the last year that could be included in Mr. Stoneburner's number but were not within OSHES jurisdiction.

Mr. Anderson asked if there were any other industries that were exempt from OSHES authority. Mr. Czehowski said only those involving federal installations are outside of OSHES jurisdiction. Mr. Czehowski commented that the 51 deaths referred to by Mr. Stoneburner may be considered occupational fatalities, but not all were required to be investigated by OSHES. Mr. Anderson noted that further clarification is needed.

Commenting on the AeroTech, Inc. incident investigation, Mr. Czehowski said once the fire department had cleared the area, OSHES began interviewing the employees and management and reviewing the physical evidence to determine if the employer followed OSHA codes. The inspection concluded the following:

1. AeroTech, Inc., an employer since 1987, conducted limited training and had a safety program, but it could not be determined if OSHA codes were followed.
2. The incident involved a slotting machine that consisted of a saw blade to cut slots in rocket motors. The employer had safety rules: (a) when the blade area is cleaned, the slotting machine is to be shut off and unplugged; and (b) only nonsparking tools such as brass were to be used in the area. However, it appeared that the employer did not supply nonsparking tools—the employee used a steel-handled brush—and the machine was not unplugged as it was cleaned. In an attempt to adjust the exhaust vent that was connected to a nonstandard vacuum (one that could be bought at Home Depot as opposed to an explosive-proof type), the employee hit the power switch. The saw blade struck the steel handle of the brush that was left on the surface of the machine. The hobby rocket propellant on the face of the machine and in the elbow of the vent, which also included ammonium perchlorate, ignited causing the subsequent fire that injured the employees.
3. Citations were issued under *Nevada Administrative Codes* (NAC) Chapter 618, “Occupational Safety and Health,” to AeroTech, Inc., specifically NAC 618.5155 through NAC 618.5335, “Manufacture, Handling and Storage of Ammonium Perchlorate” as follows:
 - Inappropriate system for cleanup and collection of hazardous residues with a \$1,500 penalty;
 - A group citation for serious regulatory violation for accumulation of ammonium perchlorate that was not emptied daily;
 - For inappropriate tools and equipment being used—they should have been nonsparking tools—a serious regulatory violation was issued with a penalty of \$1,500;
 - Under CFR Title 29 Chapter XVII Part 1910, the drill presses were not secured to the floor, resulting in a \$300 citation;
 - A \$300 penalty for no showers for the employees, no rubber over boots, and lab coats removed from the facility;
 - Failure to maintain a Class 2, Division 2 environment, which required, among other things, explosive-proof equipment and wiring, with a \$1,500 penalty; and
 - Lastly, a \$1,500 penalty levied for the proximity of another inhabited building being closer than 115 feet.
4. At the present time, AeroTech, Inc. is appealing the citations. The owner/operator had 15 days to request an informal conference with the district manager to contest the citations. If not resolved at the informal level, AeroTech, Inc. has the opportunity to request a post-contest meeting. The next step would be to file an appeal with the Occupational Safety and Health Review Board, which is appointed by the Governor. If the citations are still not resolved, the appeal would progress to the district court and finally to the Nevada Supreme Court.

Chairman Townsend asked if the fines are stayed until resolution. Mr. Czehowski responded in the affirmative that all fines are stayed until a final determination is reached. Chairman Townsend asked if interest accumulates during the appeal process. Mr. Czehowski replied in the negative. Chairman Townsend commented that there should be a

penalty for dragging out the process. Assemblyman Anderson asked what percentage of recommendations is upheld through the various stages of the process. Mr. Czehowski noted that few cases progress to the Occupational Safety and Health Review Board. The OSHES prevails in the majority of cases. Mr. Anderson queried whether less than 10 percent are challenged or appealed. Mr. Czehowski said the majority of violations are resolved at the informal conference level, and less than 1 percent progress to appeal.

Assemblywoman Von Tobel asked for a description of the coordination with the DEP during the investigation. Mr. Czehowski said there is coordination with the DEP in particular areas, such as process safety management, which is mandated by the federal EPA. There is a cooperative agreement with DEP to avoid any duplicative efforts. Employers are not notified by OSHES prior to an inspection. If an employer does not comply with OSHA codes, OSHES will issue citations. It is Mr. Czehowski's opinion that the DEP is more involved with air quality issues and not occupational safety and health.

Regarding DTI, Mr. Czehowski agreed with Chairman Townsend that "what could be done wrong—happened." Continuing, he said the employer moved into Nevada with willful and conscious disregard for OSHA laws, set up an establishment that resulted in numerous hazardous violations known to the employer, which subsequently resulted in a fatality and injuries to employees. The fact that the employer had another facility in California where it complied with state regulations was taken into consideration when OSHES issued the willful citations.

Chairman Townsend drew attention to the briefing binder (Exhibit A, Tabs F, G, and H) that includes information on the criminal violations filed by the Office of the Attorney General and the Douglas County District Attorney. Mr. Czehowski verified that all information gathered by OSHES was given to the Douglas County District Attorney.

While nothing can be done to make the situation easier on the families of those involved in both these accidents, Chairman Townsend encouraged pursuit of these matters to the full extent in an effort to send a message that Nevada will prosecute those who willfully ignore the law.

There are four categories of citations issued by OSHES:

- Willful—A violation in which either: (1) the employer committed an intentional and knowing violation, or (2) the employer knew that a hazardous condition existed and made no reasonable effort to eliminate it.
- Serious—A violation that exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known with reasonable diligence of the problem.
- Repeated—A violation where the employer has been cited previously for a substantially similar condition and the citation has become a final order of the Review Board.
- Other—A violation that has a direct relationship to health and safety, but is not serious in nature, is classified as "other."

Mr. Czehowski reported that OSHES issued two citations for willful violations with fines of \$63,000 each along with other citations for serious violations related to the employer having a responsibility to ensure a work environment that is safe and healthful. The employer was issued three citations for serious violations with penalties of \$5,600 each. It also received two citations for other violations related to regulatory and training issues, each with a fine of \$800. As a result, total citations included fines of \$144,400. (See Invoice 1 Abatement Notice Reminder, Exhibit A, Tab G.) These citations were not resolved at the informal or post-contest level and are scheduled for review by the Occupational Safety and Health Review Board.

Mr. Czehowski reported that the DTI incident involved employees placing aerosol cans containing propane or butane on a spike and puncturing the can using a rubber mallet. Any foam in the cans fell into a container below the work area. The flammable vapors that were slightly heavier than air were released and lingered around the employees' ankles. Due to the nonstandard wiring, a spark from an electrical fixture in the area, the use of an electric forklift (not explosive-proof), the inadequate ventilation system, and/or the cross-ventilation from open doors on the 40-foot metal cargo container commonly referred to as a "con-ex box," the flammable vapors ignited.

Assemblyman Anderson asked if the facility was newly constructed or whether an existing building had been modified. Mr. Czehowski said, except for some rough electrical work, the building existed. Mr. Anderson reiterated that since the employer had operated a similar facility in California, he should have known what was required for the Nevada facility. Mr. Czehowski agreed and emphasized that the employer knew the hazards and willfully chose to ignore proper procedures. Mr. Anderson expressed hesitancy to draw statewide conclusions based upon one person's willful acts and overt criminal behavior.

**REPORT ON THE INVESTIGATION OF THE INDUSTRIAL EXPLOSION AT
AEROTECH, INC. CONDUCTED BY THE CLARK COUNTY FIRE DEPARTMENT**

Dan Musgrove

Dan Musgrove, Intergovernmental Relations Manager, Clark County, Las Vegas, reported that because of the uniqueness of the AeroTech, Inc. incident, it was important to review and learn from actions taken on October 15, 2001. The government of Clark County and the Clark County Fire Department asked for assistance from Nevada's Department of Public Safety in an investigation of the acts or omissions of members of the Clark County Fire Department prior to, during, and after the events associated with fire suppression activities at the AeroTech, Inc. facility. The State Fire Marshal along with Tom Riley, Clark County Manager; Chief Earl A. Greene, Clark County Fire Department; and Robert Wideman, Chief, Nevada's Department of Public Safety, have signed an agreement pertaining to that ongoing investigation.

Earl A. Greene

Earl A. Greene, Fire Chief, Clark County Fire Department, Las Vegas, reported that AeroTech, Inc. has been in business since 1986 with the proper business license, zoning, and compliance with building and fire codes. The accident on October 15, 2001, involved an explosion and magnesium fire.

Assemblyman Anderson questioned whether Chief Greene had specific recommendations that would allow the Clark County Fire Department to react more effectively. Chief Greene reported that no agency has the manpower to inspect all the businesses but anticipated that an annual audit of facilities based upon certifications of programs would be effective. Mr. Anderson related his experience with fire drills in the Washoe County School District to that of an inspection by the fire department. Continuing, Mr. Anderson queried how residential growth surrounded the AeroTech, Inc. facility. Chief Greene said he is not an expert in the area of planning and zoning and suggested that Mr. Anderson's question should be addressed to the appropriate planning officials such as the Clark County Planning staff.

Chairman Townsend stressed the subcommittee is seeking insight relating to:

- The exact location of the AeroTech, Inc. facility;
- Residential growth around the facility;
- How close residential structures are to the facility;
- The county's analysis of the area; and
- Any change in policies.

Concluding, Senator Townsend noted that the loss of life and injuries were a terrible tragedy, but there existed a potential for worse. Mr. Musgrove informed the subcommittee that information could be provided in advance of the next meeting.

Richard Brenner

Richard Brenner, Fire Protection Engineer, Clark County Fire Department, Las Vegas, asserted that hazardous materials are not licensed or regulated. He recommended regulating hazardous materials. His second recommendation is the creation of a hazardous materials repository in Nevada for storage, use, manufacturing, and transportation. Currently, when there is an emergency on the highway or railway, the incident commander can call ChemTrack to obtain information quickly. The ChemTrack Environmental Operations Group provides environmental compliance guidance and support to all Lawrence Livermore organizations, including incident response services, which are not presently available in Nevada. Chairman Townsend commented that type of information deserves consideration and should be forwarded to Nevada's Congressional Delegation. Senator Townsend expressed his desire to invite congressional staff to attend a subcommittee meeting.

Mr. Musgrove reported that Clark County Commissioner Myrna T. Williams formed an internal task force within county staff to conduct investigations regarding proper business licensing and zoning. Mr. Musgrove said he could provide that information as well before the next meeting of the subcommittee. Chairman Townsend reiterated the need for copies of any proposed recommendations.

Tom Stoneburner

Tom Stoneburner, previously identified on page 4 of these minutes, asked to clarify any confusion regarding the 51 occupational deaths he had previously reported. That number was obtained from the OSHA office in Reno. It was not his intent to mislead the subcommittee. If a distinction between accidental and occupational deaths should have been made, it was not understood at the time.

**REPORT ON THE INVESTIGATION OF THE INDUSTRIAL EXPLOSION AT
DTI CONDUCTED BY THE EAST FORK FIRE AND PARAMEDIC DISTRICTS**

Tod F. Carlini

Tod F. Carlini, District Fire Chief, East Fork Fire and Paramedic Districts, Minden, informed the subcommittee that three independent fire districts provide fire protection and emergency medical services in Douglas County. Chief Carlini read a prepared statement (Exhibit E) that included information on the response to the three-alarm fire, recognition of the National Fire Protection Association (NFPA) 704 building placard, and the investigation.

It was determined that the following products were stored in the facility:

- Butane;
- Hazardous waste material;
- Paint;
- Pepper spray;
- Pesticides;
- Petroleum-based products; and
- Propane.

While the incident was controlled within two hours, 83 response personnel were on the scene for seven hours. The following resources were deployed:

- Nine engines;

- Three tenders;
- Two service companies;
- Three advance life support rescues;
- One intermediate life support rescue;
- Four command units;
- Two support units;
- Two medevac helicopters; and
- Three hazardous materials team units.

Chief Carlini reported that the investigation conducted by the East Fork Fire and Paramedic Districts and the Douglas County District Attorney's Office resulted in criminal charges being filed against the owner of the facility and business known as DTI (Exhibit F). A copy of the Affidavit of Probable Cause for Arrest Warrant outlining the specifics of the investigation was also provided (Exhibit G).

Continuing, Chief Carlini suggested that two main areas of focus are needed as they relate to industrial regulations and safety: (1) regulatory control, inspection, and enforcement; and (2) response information gathering, management, and sharing. Douglas County currently attempts to address both areas of deficiency through a five-point program:

- State Fire Marshal hazardous materials permit process;
- Adoption of uniform codes;
- Voluntary information solicitation;
- Fictitious business name filing databases; and
- Fire department prefire suppression planning.

Concluding, Chief Carlini shared his opinion that the most significant deficiency in statewide efforts to provide for the safety of workers and to better prepare emergency responders is the lack of an appropriate system and process that would efficiently allow the sharing of information among agencies that have primary responsibilities, both regulatory and response.

Chairman Townsend asked Chief Carlini to highlight at the next meeting cultural, regulatory, or statutory obstacles in terms of sharing of information. He remarked that Chief Carlini should work with his colleagues in Clark County and other jurisdictions to ensure that everyone is included.

Assemblyman Anderson agreed that communication is one of the major failures on an ongoing basis. He partially understood how the problem starts—people take pride in their work but do not recognize that others may also need similar information. Mr. Anderson queried that although DTI obtained an EPA ID number and DEP issued the written determination of recycling, the fire department was not aware of the existence of the business. Chief Carlini replied in the affirmative. Continuing, Mr. Anderson questioned whether the DEP inspection results relating to DTI's failure to comply with federal regulations and file an emergency contingency plan were forwarded to the fire department. Chief Carlini indicated that the DEP inspection results were not forwarded to the fire department.

Assemblywoman Von Tobel questioned whether there were other businesses operating without the proper permits.

Chief Carlini reported that an overall business registration process is being conducted in Douglas County, mailing 1,500 forms soliciting information to area businesses. In addition, a request has been sent to the State Fire Marshal Division to access information regarding the 159 sites in Douglas County under its authority. That information has not yet been received. Assemblywoman Von Tobel requested that information be submitted to the subcommittee before its third meeting.

Senator Titus remarked that if counties are not willing to accept the responsibilities to pay for and enforce the regulations, the state must assume that burden. The subcommittee has heard testimony concerning how the State Fire Marshal Division, OSHES, and DEP are overburdened, understaffed, and underfunded. Senator Titus questioned why Douglas County is reluctant to require a business license, which would allow companies to assist with the burden of monitoring hazardous materials that are manufactured, stored, and/or used within the state. Chairman Townsend agreed that the question should be asked of the county commissioner and/or manager.

Assemblyman Anderson asked if hazardous materials and appropriate notification have been topics at any of the volunteer firefighter meetings. Chief Carlini said hazardous materials are a significant issue as it relates to equipping and training firefighters, more so than information collection and databases. Assemblyman Anderson said his concern relates to emergency notification placed on the outside of warehouses that provides an arriving fire company a preliminary inventory of items within the building prior to entering the structure.

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PUBLIC COMMENT

Ray Bacon

Ray Bacon, Executive Director, Nevada Manufacturers Association (NMA), Carson City, informed the subcommittee that neither AeroTech, Inc. nor DTI were members of the NMA, and he had not been aware of their existence. Disclosing that, Mr. Bacon made general comments without reference to either particular facility. He cautioned that addressing the issues raised by noncompliant facilities, care must be taken not to penalize those businesses that comply with current regulations. In his view, the subcommittee's task is to determine how to penalize noncompliant businesses that have demonstrated they will not adhere to the laws without burdening those that routinely maintain compliance. Mr. Bacon informed the subcommittee that he has worked with the CAPP since its inception in 1991, attempting to remove the list of hazardous materials from statute and place it into regulations during the 1993, 1995, and 1997 Legislative Sessions without success. He stressed that the list of hazardous materials needs to be in regulation to facilitate rapid adjustments as changes occur in the risk management process and/or process safety management at the federal level and Nevada's CAPP.

Continuing, Mr. Bacon said the subcommittee had touched on the critical issues of government actions and zoning. AeroTech, Inc., PEPCON, and Sierra Chemical involved zoning issues. The NMA does not have a solution but acknowledged that these issues must be resolved. He pointed out that by allowing residential encroachment on industrial zones, government officials place the public's safety at risk. The CAPP provides prior notification of inspections, which usually take multiple days. These inspections may involve multitask review since OSHES is also notified, encouraging simultaneous evaluation. Mr. Bacon emphasized that a large complex cannot change its facilities or procedures overnight.

Mr. Bacon noted that there have been numerous discussions regarding the hazardous materials permit process in the State Fire Marshal's office. By definition, the permitting process is established as a self-funded program. Currently, registration is inconsistent since the State Fire Marshal Division handles a segment of the process, and the remainder is focused at the county level. There have been unsubstantiated reports where a small engine shop with a gallon of gasoline in the facility being required to obtain a hazardous materials permit from the State Fire Marshal Division. Mr. Bacon stressed that was never the intent of the statute. Clarification as to what is expected is needed to provide consistency in the registration process. Since 1982, the issue of creating a database that is readily available to on-site incident commanders to know what is located within a facility has been debated.

Further, Mr. Bacon expressed skepticism regarding the application of interest on OSHES fines while a matter is being litigated. There have been violations where the initial fine was listed in the hundreds of thousands of dollars. Also, there have been instances of admission regarding some level of guilt but not at the level cited by OSHES. One citation imposed fines in excess of \$800,000, but the settlement was less than \$200,000. Mr. Bacon asserted that

if interest is imposed on fines while a matter is being litigated, the state should be required to pay legal fees if its allegations are not fully supported.

Mr. Bacon remarked that the major reason degassing operations started was to reduce the exposure to hazardous materials in landfills. These operations began in the Northeast because of landfill issues, and California has adopted similar procedures. Further, Mr. Bacon said inviting a representative from ChemTrack to testify might be beneficial for the subcommittee. Nevada has more hazards transported through it on a daily basis than what is typically located at fixed facilities. The ChemTrack operation is the industry-sponsored organization that handles transportation emergencies, tracking down within a matter of minutes where a truck originated and its contents, and providing that information to on-site incident commanders. It is a complex and effective system.

Mr. Bacon remarked that one of the state-of-the-art facilities in the country, Aero Pacific, has a warehouse containing tons of spray cans at any point in time and is located in Douglas County. This operation is just six miles away from a facility that intentionally violated Nevada law.

Assemblyman Anderson requested that the State Fire Marshal attend the next meeting of the subcommittee to comment on the 2001 audit of the Division (Exhibit B).

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:55 a.m.

Exhibit H is the "Attendance Record" for this meeting.

Respectfully submitted,

Deborah Rengler
Senior Research Secretary

Vance A. Hughey
Principal Research Analyst

APPROVED BY:

Senator Randolph J. Townsend, Chairman

Date _____

LIST OF EXHIBITS

Exhibit A is a briefing binder titled "Legislative Commission's Subcommittee on Industrial Explosions, 2001-2002 Interim," prepared and provided by Crystal McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit B is a copy of the "Audit Report, State of Nevada, Department of Motor Vehicles and Public Safety, State Fire Marshal Division—2001," provided by Assemblyman Bernie Anderson.

Exhibit C is a packet of documents related to the explosion at Sierra Chemical provided by Tom Stoneburner, Director, Alliance for Workers' Rights, Reno, Nevada, consisting of the following:

- A letter dated January 12, 1999, to United States (U.S.) Senator Harry Reid (D-Nevada) from Mr. Stoneburner

relating to regulation of the manufacture and distribution of explosives by the Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Department of the Treasury;

- A letter dated January 19, 1999, to U.S. Representative Jim Gibbons (R-Nevada) from Mr. Stoneburner, together with a summary of the verbal statements of Sierra Chemical workers taken on June 23, 1998;
- A map of the Sierra Chemical compound drawn by Gustavo Alcala;
- A document titled “The United States Treasury Department, The Bureau of Alcohol, Tobacco and Firearms”; and
- The prepared statement of Michael W. Morrissey, Assistant Special Agent in Charge, San Francisco Field Division, AFT, dated January 27, 1998, titled “Commission on Workplace Safety and Community Protection.”

Exhibit D is a copy of the prepared testimony read into the record by Allen Biaggi, Administrator, Nevada’s Division of Environmental Protection, State Department of Conservation and Natural Resources, Carson City, Nevada, provided by Mr. Biaggi.

Exhibit E is a copy of the prepared testimony read into the record by Tod F. Carlini, District Fire Chief, East Fork Fire and Paramedic Districts, Minden, Nevada, provided by Chief Carlini.

Exhibit F consists of a copy of the Criminal Complaint and Warrant of Arrest for Walter E. Gonzales filed in February 2002, provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit G is a document titled “Affidavit of Probable Cause for Arrest Warrant,” provided by Tod Carlini, District Fire Chief, East Fork Fire and Paramedic Districts, Minden, Nevada.

Exhibit H is the “Attendance Record” for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Research Library at (775) 684-6827.