



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of December 5, 2017 9:00 AM

Nevada Legislative Building, Room 4100, 4th Floor
401 South Carson Street
Carson City, NV

Members Present:

E. Jim Gans, Chairman
Tom Porta, Vice Chairman
Mark Turner
Cary Richardson
Kathryn Landreth
Jason King
Rich Perry
Kacey KC

Members Absent:

Jim Barbee
Tony Wasley

SEC Staff Present:

Dawn Buoncristiani, SEC/DAG
Valerie King, Executive Secretary
Shanon Pascual, Recording Secretary

BEGIN SUMMARY MINUTES

1) Call to order, Roll Call, Establish Quorum: (Discussion) The meeting was called to order at 9:05 am by Chairman Jim Gans. Ms. King confirmed the hearing was properly noticed and that a quorum was present.

2) Public Comments: (Discussion) Chairman Gans called for public comment. There was none.

3) Approval of the minutes for the September 13, 2017 SEC meetings: (Action Item) Chairman Gans requested comments from the Commission regarding the September meeting minutes. Minor typos were noted.

Commissioner Landreth moved to approve the minutes with the mentioned typos corrected, and Vice Chairman Porta seconded. The minutes were unanimously approved.

Introduction of the following two regulations was provided by Mr. Paul Comba, Bureau Chief for Water Quality Planning.

4) Permanent Regulation - R102-16 Bureau of Water Quality Planning: (For Possible Action) Mr. John Heggeness, Supervisor of the Standards Monitoring Branch in the Bureau of Water Quality Planning, presented the regulatory petition to the Commission. Mr. Heggeness explained the

proposed revisions for updated recreational water quality criteria. Ambient Water Quality Criteria – defined by the presence of *Escherichia coli* (*E. coli*) for freshwater and *Enterococci* for marine and freshwater – were recommended to protect human health in waters designated for primary contact recreational use. The Clean Water Act requires Environmental Protection Agency (EPA) to periodically update ambient water quality criteria. EPA last issued ambient water quality criteria for bacteria in 1996. The Nevada Division of Environmental Protection (NDEP) is proposing to adopt the updated ambient water quality criteria for bacteria (EPA, 2012) in Regulatory Petition R102-16.

NDEP proposes to adopt the above *E. coli* criteria for protecting human health in water bodies designated for primary contact recreation use. This action aligns with the most current numeric criteria recommended and published by the EPA for *E. coli* bacteria to protect waters for primary contact recreational use. The proposed revisions include:

- Changing the existing reference period from annual geometric mean (AGM) to geometric mean (GM) for all waters that have an existing AGM to protect waters for primary contact recreational use;
- Changing the unit of measurement from most probable number (MPN) per 100 mL to colony-forming -units (CFU) per 100 mL;
- Replacing existing *E. coli* S.V. criterion with the recommended 2012 S.V. of 410 CFU/100 mL, which has been determined to be protective of all levels of contact recreation use;
- Adding a footnote that explains frequency and duration limits of the GM and SV criteria; and
- Adding a definition of CFU.

EPA's water quality standards regulations (40 CFR 131.11(a) (1)) require states to adopt protective criteria that are based on established scientific rationale. Nevada's existing *E. coli* bacteria standards for the protection of waters for primary contact recreational use are based on EPA criteria published in 1986. EPA published updated *E. coli* bacteria criteria in 2012. The 2012 criteria reflect significant research and new scientific developments since the prior criteria issued in 1986. Adoption of EPA's 2012 criteria ensures the most appropriate protection for recreational users of Nevada's surface waters. (Attachment 1)

Mr. Heggeness asked for questions from the Commission.

Chairman Gans and Commissioner Perry both asked about the difference in cost between the two programs. Commissioner Perry was particularly concerned with how permits would be impacted and the effect of substantial changes or impacts on the process. Mr. Heggeness explained that the cost of the existing method at the lab for testing is \$15.00 and that the new method costs \$60.00. The permits in question would be the area of primary contact recreation use. Mr. Comba explained that this change primarily impacts the Waste Water Discharge permits issued through NDEP. The number of permits would not change; what changes is the analytical method.

Chairman Gans pointed out that there is not much change in the methods. Mr. Heggeness explained that EPA accepts both methods; however, he suggested that utilizing both methods to expand the database is valuable to the programs.

Commissioner Landreth asked Mr. Heggeness his opinion regarding the advantage of CFU over MPN. Mr. Heggeness responded that the data is comparable in each test; however, Mr. Heggeness indicated that the EPA feels that CFU is more reliable than the statically method already used. The data shows that they are comparable in each test, and it is suggested that both can be used. Commissioner Landreth inquired about the difference in the frequency of testing between AGM and GM. Mr. Heggeness explained the requirements of both.

Several Commissioners expressed concerns about the variance between two different results if both tests were used. They wondered whether there was an issue with having multiple ways to determine the levels. Mr. Heggeness answered these questions, explaining that there is not much difference between the two tests. Commissioner Wasley wanted to know if there was a process or a procedure that would be put into place should there be a grey area of difference. Mr. Heggeness stated that they had not yet addressed that possibility, but would continue to work with staff to create a concrete process.

Commissioners asked for clarification on permit testing. In response, Jennifer Carr, Deputy Administrator of NEDP, explained that the compliance point for any discharger in the program or any other program is what is written in the permit. In other words, if MPN is in the permit, MPN would be the compliance point regardless of any variance in the two different methods. If they choose to do both methods where one test failed and the other passed, the driver would be the one written in the permit. She continued, describing how the permits are renewed every 5 years. If the evidence is pertinent to the change, then the renewal time would be the time to change the MPN testing protocol on the permits.

Motion: Commissioner King moved to adopt Regulatory Petition R102-16. Commissioner Perry seconded the motion. All voted in favor of adoption of the regulation.

5) Permanent Regulation - R109-16 Bureau of Water Quality Planning: (For Possible Action) Mr. John Heggeness, the Group Supervisor for the Standards Monitoring Branch with Water Quality Planning, presented the regulatory petition to the Commission. (Attachment 2) Mr. Heggeness explained that NDEP wants to amend Nevada Administration Code (NAC) 445A.070 - 445A.2234 – Standards for Water Quality – by making changes to numeric criteria and formatting for clarity and consistency throughout the water quality standards (WQS) tables.

Several nitrogen species are currently combined into one row in some of the WQS tables. For clarification, each species (total nitrogen, nitrate, and nitrite) will be placed in a separate row. No changes to the numeric criteria are proposed at this time for any of the nitrogen species.

Water quality criteria for toxic materials applicable to all named waters are contained in NAC 445A.1236. For clarification, a footnote specifying this NAC reference is being added to the WQS table for each named water.

Other revisions to the NAC tables include the following:

1. Changing “mg/l” to “mg/L”
2. Changing “total Phosphates” to “Total Phosphorus” and “Ortho Phosphate” to “Orthophosphate”
3. Changing “Suspended Solids” to “Total Suspended Solids”
4. Updating the reference to the “Colorado River Salinity Standards” to 2014
5. Changing “Alkalinity as CO₃” to “Alkalinity as CaCO₃”
Making other formatting changes for clarity and consistency of parameter names and units throughout all the WQS tables

Commissioner KC asked if it was possible to reapprove the general plan every three years instead of the current adoption plan. Mr. Heggeness suggested that wording be changed to reflect Commissioner KC’s request.

Mr. Heggeness walked through a handout (Attachment 2) with a table and the proposed changes. Additional revisions include:

1. Changing NAC 445A.1446 to read “where State Highway 789 crosses the Humboldt River.”
This change is necessary because the Humboldt River at State Highway 789 extends from

the Battle Mountain Gage downstream to where State Highway 789 crosses the Humboldt River. The next segment of the Humboldt River the Humboldt River at State Highway 789, currently extends from the Comus Gage to Imlay. The total distance from Comus Gage downstream to where State Highway 789 crosses the Humboldt River is approximately 6 miles; therefore, the two reaches overlap by 6 miles. The proposed changes effect NAC 445A.1444 and 1446.

2. Revising language regarding the Humboldt River at State Highway 789. The limits of the table apply to the body of water known as the “Humboldt River from the Battle Mountain Gage to where State Highway 789 crosses the Humboldt River.” This segment of the Humboldt River is located in Humboldt and Lander Counties.
3. Revising language concerning the Humboldt River at Imlay. The limits of this table apply to the body of water known as the “Humboldt River from the Comus Gage where State Highway 789 crosses the Humboldt River to Imlay.” This segment of the Humboldt River is located in Humboldt and Pershing Counties.

Chairman Gans asked the Committee for comments or questions from the Las Vegas Office on either regulation. There were none. Chairman Gans then asked for questions from the Commission or public. There were none.

Motion: Commissioner Perry moved to adopt Regulatory Petition R109-16 with the NDEP-requested revisions ([Attachment 3](#)). Commissioner Turner seconded the motion. It passed unanimously.

Motion to Amend Agenda Item 4: Chairman Gans recognized a mistake on the first Regulatory Petition. It had been adopted without including the requested revisions. Chairman Gans took the meeting back to agenda item 4 to amend Regulatory Petition R102-16. Commissioner Perry made a motion to amend Regulatory Petition R102-16 to include the NDEP-proposed revisions ([Attachment 4](#)). Commissioner Turner seconded the motion. It passed unanimously.

6) Administrator’s Briefing to the Commission: (Discussion) Mr. Greg Lovato, Administrator of NDEP, updated the Commission on recent management changes. Val King has been promoted to chief of the Bureau of Administrative Services. Misti Gower, who has served as an assistant to the SEC since 2012, has been promoted to a Management Analyst position in the Bureau of Air Pollution Control. Shanon Pascual and Stephanie Simpson will continue assisting Val King and the SEC.

Mr. Lovato then addressed the introduction of another recycling bill – SB 315 – in the past legislative session, which originally sought to mandate a 35% waste diversion rate. Ultimately the bill did not pass. However, Lovato noted that NDEP has seen continued interest by the legislature over the years. To address this interest, the plan is to keep the SEC updated on the recycling program activities and progress. Mr. Lovato briefly covered two areas: 1) the Nevada statewide recycling rate and 2) NDEP internal projects and projects with other state agencies.

State recycling rate calculations for 2016 increased from 21% in 2015 to 23% to 2016. This was the first year that data was received from Lyon County. NDEP is hopeful that Nevada will exceed the existing 25% recycling goal in SFY17.

Since this summer, responsibility for emptying the Bryan Building recycling bins is now part of the existing custodial contract. NDEP plans to work with other agencies to have state building custodial contracts include recycling provisions. NDEP is also working with other state agencies to enhance recycling efforts. NDEP staff met with the Department of Corrections/High Desert State Prison to start a pilot recycling program focusing on diversion of cardboard from landfilling, which could also result in substantial cost savings to the state.

Mr. Lovato went on to update the Commission on the Nevada Priorities at Nevada National Security Site (NNSS). NDEP wants enhanced management of low-level radioactive waste disposal at the Nevada National Security Site (formerly known as the Nevada Test Site) operated by the US Department of Energy (DOE). Importantly, this recommendation is completely separate from the Yucca Mountain Project, which is related to high level commercial waste and is tracked by the Agency for Nuclear Projects out of the Governor's office. The NNSS receives approximately 1 million cubic feet of low-level Department of Energy related waste per year from 26 generator sites in 14 states across the country. The waste is both legacy waste from Cold War nuclear weapons production and testing, and waste that is generated from ongoing nuclear stockpile management activities. According to the DOE, approximately 5% of the total waste generated across the DOE complex comes to the NNSS. Approximately 90% is disposed at the original generator site and 5% is disposed of commercial low-level radioactivity waste facilities. Although Nevada does not have legal authority to regulate disposal of DOE low-level radioactive waste, under an Agreement in Principle with DOE, NDEP provides oversight of low-level waste disposal activities at the NNSS. NDEP performs this oversight through participation on a technical Waste Acceptance Review Panel for all waste profiles; review of facility Waste Acceptance Criteria; and DOE generator site evaluations.

Mr. Lovato continued: Although all NNSS low-level waste disposal activities meet existing environmental, human exposure, and safety requirements, NDEP wants to exhaust any alternatives to disposal of low-level waste at the NNSS where possible. To that end, NDEP is engaging with stakeholders – including local governments, tribes, and the DOE – to enhance management of low-level waste in 4 key areas that will help to minimize the amount of waste coming to NV. The four different areas are as follows: increased predictability and certainty in waste forecasting, improved clarification of how low level waste is defined and classified, enhanced waste verification, and continued incident planning and information outreach related to transportation of low-level waste.

1. Because much of the low-level waste was generated during the Cold War (a period before current practices for waste management were in place) a complete inventory of the waste is not available. Generation of waste from these sites can be difficult to predict as it is driven by changing federal budget appropriations, regulatory agreements with other states and EPA, and technical complexity. Nonetheless, Nevada and local communities near the NNSS are interested in as much transparency about waste that may be coming to NV. NDEP is requesting that DOE provide more detail about the steps they go through to determine whether the waste can be disposed of on-site or at other commercial locations. NDEP is also requesting DOE to explore options for reducing ongoing generation of waste. Recently, NDEP has had good initial discussions with DOE on this matter. They are planned to continue.
2. The low-level radioactive waste managed by DOE is not defined and classified in a manner that is transparent to interested stakeholders and the public. This is a result of statutory and regulatory definitions of low-level waste. Existing statutes and regulations define low-level waste by what it is not which does not account for the broad range of characteristics and inherent hazard associated with different types of low-level waste. Low-level waste is defined as material that is *not* high-level waste or other categories of radioactive waste such as transuranic waste defined by origin, rather than level of radioactivity. At the request of Nevada, DOE sponsored a workshop conducted by the National Academy of Sciences (NAS) in October 2016 on low-level waste classification. While the NAS was not tasked with making any recommendations for low-level waste classification, much of the discussion echoed Nevada's concerns about low-level waste classification and is reflected in the proceedings from the workshop. Nevada will be requesting DOE to enlist support

from NAS or another independent and qualified 3rd party to make recommendations for improving low-level waste classification.

3. As stated before, much of low-level waste was generated in the past. Because handling of the waste can be complicated, most of what DOE knows about the waste is based on knowledge of Cold War era processes that originally generated the waste. While generator knowledge can be critical, Nevada would like to see increased use of independent, analytical testing where possible so that waste characteristics can be verified. Independent verification could also include increased use of real time radiography (or x-ray) technology at the NNSS for waste streams, and increased random monitoring of dosage rates on the outside of waste hauling trucks to ensure they are meeting Department of Transportation (DOT) and other standards. DOE hired Desert Research Institute (DRI) to conduct a study in 2003 to verify that levels outside trucks were meeting standards, and Nevada would like to see that study updated and enhanced. NDEP is requesting DOE, along with other local stakeholders, to revisit these issues.
4. At Nevada and local community request, DOE has organized several tabletop, desktop, and on-site NNSS exercises associated with transportation accidents. It has also conducted workshops on low level waste transportation. NDEP would like to see these exercises continue so that local first responder resources are informed and prepared to respond to any incidents that may occur during transportation of low-level waste.

After explaining low-level waste, Mr. Lovato discussed an update on the Anaconda Site. On July 31, 2017 NDEP formally requested that US EPA defer management of the site to pursue a state led, private funding solution for the Anaconda Copper Mine Site in Lyon County. NDEP has negotiated a set of draft agreements with Atlantic Richfield Company (ARC), a BP affiliated company. The agreements provide for an overall plan whereby ARC would take on the federal government financial responsibility for the orphan share of the site cleanup as if the Site were listed on the EPA National Priorities List of Superfund sites. That orphan share is the result of activities by the now bankrupt mining company Arimetco. Arimetco operated a copper mine at the Site in the 1990s and abandoned the site in 2000. Arimetco left behind between an estimated \$30 to 40 million liability in mine closure and reclamation costs. NDEP has long believed that it can more effectively manage the cleanup than EPA because the office is located closer to the Site and has demonstrated experience in mine reclamation in Nevada. Given trends in the federal budget as a whole (the EPA Superfund budget in particular), NDEP also believes that a state lead management program provides more certainty for actual cleanup at the site. NDEP anticipates a decision to defer the site will be reached by EPA within the next month.

Finally, Mr. Lovato updated the Commission on lead testing in schools. About a year ago, Jennifer Carr (Deputy Administrator) briefed the Commission on a grant NDEP received from the US EPA to offer a voluntary testing program for the possible presence of lead in elementary school (and Pre-K) drinking water systems across the State. Although compliance with the Lead and Copper Rule (LCR) is high for Nevada's Public Water Systems, there is no specific law requiring testing of drinking water in schools. Water suppliers generally have not included schools in their sampling plans because the LCR requires sampling of single family dwellings.

The goals of the project are as follows:

1. To increase community confidence in the school environment and public water supply
2. To reduce children's potential lead exposure from ingestion of drinking water while at school
3. To raise awareness of potential water quality issues in Nevada schools with respect to lead

4. To create local partnerships between school districts and the water systems that serve them
5. To initiate corrective action if a problem is found

The NDEP funded a contract with the Nevada State Public Health Lab for analysis of two initial samples per school for approximately 408 elementary and Pre-K facilities. Samples target one representative water fountain and a primary culinary water supply location. To date, sampling is complete in Carson City and nearing completion in Washoe County. Furthermore, sampling has begun in Clark, Nye, Lyon, and Douglas counties. Coordination will begin in Churchill, Mineral, and Storey counties this month. Following initial testing, NDEP has been pleased to discover that *all* water fountains have tested below action levels. The few problems found to date involve old kitchen faucets or (in the case of Washoe County) old sinks in some nurse's offices. The grant also provides funding for the purchase of replacement faucets and fixtures should problems be found. This particular component of the grant promises to aid school districts that are more financially challenged.

Chairman Gans asked for questions or comments from the Commission. Ms. Lovato responded to questions from the Commissioners.

7) Public Comment: (Discussion) Chairman Gans asked for public comments. There were no public comments.

The council from the AG's office, Ms. Dawn Buoncristiani, then announced her retirement in the next week. She explained that she has enjoyed representing the Commission. Mr. Buoncristiani also announced that the new council from the AG's office will be Ms. Henna Rasul.

Chairman Gans asked when the next SEC meeting is scheduled. Ms. King responded that the next meeting is on February 7, 2018.

8) Adjournment: (Discussion) Meeting was adjourned at 10:46.

The audio recording of this meeting is available at
http://nvleg.granicus.com/MediaPlayer.php?publish_id=59e84084-dade-11e7-a872-00505691de41

ATTACHMENTS

**ATTACHMENT 1: Presentation Handout – Revision to NV Water Quality Standards
Petition R109-16**

**ATTACHMENT 2: Presentation Handout – Revision to NV Water Quality Standards
Petition R102-16**

ATTACHMENT 3: PROPOSED REVISION OF LCB FILE NO. R109-16

ATTACHMENT 4: PROPOSED REVISION OF LCB FILE NO. R102-16

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