

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Workshop to Solicit Comments on Proposed Amendments to
NAC 445B, 459 & 486A: Air Pollution

July 25, 2017
9:00 AM

Great Basin Conference Room
4th Floor
901 South Stewart Street
Carson City

Video Conference to
NDEP Red Rock Conference Room
2030 E. Flamingo Road, Ste. 230
Las Vegas

MEETING NOTES

ATTENDEES:

Workshop Chair:

Danilo Dragoni, Chief, Bureau of Air Quality Planning (BAQP)

NDEP Staff:

Patricia Bobo, Environmental Scientist, Planning and Modeling Branch, BAQP
Joseph Perreira, Environmental Scientist, Planning and Modeling Branch, BAQP

Public:

Carson City:

Barry Smith, Nevada Press Association
Brian Verheyen, Enel Green Power
Bruce Holmgren, NDEP
Steve Baker, Truckee Meadows Water Authority
Ivie Hatt, Department of Motor Vehicles – CED
Morgan Friend, Department of Motor Vehicles – CED
Lisa Simcoe, Truckee Meadows Water Authority

Las Vegas:

Kami Dempsey, Las Vegas Review Journal
Bruce Turner, Sierra Club
Bruce Clark, Clark County School District
Jeffrey Kinder, NDEP
Lisa Kremer, NDEP

CALL TO ORDER:

Mr. Dragoni called the meeting to order at 9:03 a.m. BAQP staff and attendees introduced themselves. Mr. Dragoni discussed the sign-in process, handouts and other housekeeping items. Mr. Dragoni reviewed the workshop agenda. There were no questions or changes to the agenda.

Mr. Dragoni explained the temporary regulatory adoption timeline and the reason why the petitions are being presented again in the permanent cycle. Once the petitions have been presented at the workshop, the Nevada Division of Environmental Protection (NDEP) will consider comments received at the workshop, make any appropriate revisions and submit the petitions to the State Environmental Commission (SEC). The SEC will forward them to the Legislative Counsel Bureau (LCB), which reviews the petitions for clarity and conformity to other state regulations. After the LCB review the SEC will hold a hearing on September 13, 2017 at 10 a.m. at the Carson City NDEP offices where they will consider the petitions. There will be a 30-day public comment period prior to the SEC hearing and another opportunity for comment at the hearing. If the regulations are adopted by the SEC, they are submitted to the Legislative Commission. If the Legislative Commission approves the regulations, they are sent to the Secretary of State where they are filed and become effective. There is not a certain date for when the petitions may become effective because the Legislative Commission does not meet on a regular basis. The NDEP anticipates the amendments will be approved before the end of December 2017. If the Legislative Commission approves the regulations, they are sent to the Secretary of State where they are filed and become effective.

Mr. Dragoni moved on to present the petitions.

R015-17 SUMMARY

Mr. Dragoni explained that the petition is making amendments to the e-notice and e-access requirements. He noted that there is no change in the public notice process other than removing the requirement for publishing in newspapers. The Environmental Protection Agency (EPA) published a rule requiring e-notice and e-access for any federally approved actions such as for Prevention of Significant Deterioration (PSD) or Title V actions. The NDEP is taking advantage of this change and updating the regulations to reflect this change for all public notices. The EPA changed the requirement of publishing in newspapers to posting on an internet website because it will provide more visibility for a longer period of time and an internet website also allows for more information to be available. Mr. Dragoni also explained another proposed change in the petition. The NDEP is proposing to remove the requirement to post draft permits at libraries because the process is inefficient. The NDEP contacted libraries and inquired about the usefulness of posting draft permits and the responses received were that very few members of the public viewed posted draft permits.

Mr. Dragoni proceeded to go through the petition and each proposed change. He explained that the red, strikethrough text is being removed and the blue, bold text is new language.

COMMENTS AND QUESTIONS

Barry Smith: I want to address the intent of the regulation and focus on that. What I heard was the intent is to be consistent with what the EPA did in October 2016. The newspapers oppose the October 2016 rule. The net effect is a reduction of notice to the public. Historically you can go back and find many years of public notices published in newspapers. Newspapers provide records of the notices. Newspapers have recognized since 2010 that they need to expand their reach in order to notify as many people as possible. The notices that get published in newspapers in many cases go on the newspaper's website and a statewide website called publicnoticeads.com. Individual newspapers upload their notices on this website. It's part of a

national database where 47 states and the District of Columbia upload their notices. Public notices cover a wide variety of subjects and it concerns me when it's suggested that the amount of notices be cut back. As I understand it the reason is because EPA wanted to create a national site for notices, which they did. The purpose of putting notices in newspapers is for people to have access to notices for local topics that may affect them. Online notices need to be in addition to print notices to get as much word out there as possible. Saying print notices are less effective than online notices is not an argument to eliminate print notices entirely.

I'm not sure how libraries can track who comes in to look at public notices. I think they should remain in the libraries as well. If there's a distribution problem with the libraries it seems manageable but not a reason to stop making them available in libraries.

Taking public notices out of libraries and out of newspapers starts to eliminate certain segments of the population, including the elderly, the less affluent, and rural communities. There is a very high percentage of readership in rural communities.

What's concerning about the EPA's website is that there's no archive for public notices. If there isn't an archive, what notices have been posted? Were notices posted? Can postings be verified? This leads to another point, which is newspapers provide third-party verification. You get an affidavit from the newspaper that verifies that notices have appeared on a certain date in a certain newspaper. That standard does not exist for online notices. There are cases where the public was not adequately noticed for a certain action. If you have the affidavit and printed newspaper it can be proven that adequate notice was given. This does not exist online partly because the internet is insecure and does not archive notices. Failure to properly notice is not always intentional but it could be from a mistake.

I'm not sure what the regulation means when the language says that proposed actions will be published on an internet website designed to give general public notice. I don't know what website that is. To my knowledge the Press Association's website is the only website designed to give general public notice. If the intention is to put it on the Division's website it's not a website designed for general public notice. There are numerous government agencies. If each agency chose to publish notices only to their website, the public would be responsible for checking each agency's website, which is impractical.

I urge you to consider the affect that these changes would have. Looking at the small business impact statement shows that it's not a large amount of money that NDEP will be saving that won't be going to the newspapers. The intent shouldn't be about saving money but instead about getting as much public notice out to the public.

Danilo Dragoni: Your comments are appreciated. To clarify, the intent is to publish the notices on NDEP's website. I encourage you and everyone with comments to be present at the SEC hearing.

Kami Dempsey: I agree with a lot of what Mr. Smith presented. Public participation and keeping the public informed is crucial. Having a trusted voice for people to know where to go for notifications is important. If agencies have individual websites where they publish notices it

would be nearly impossible to narrow down the notices. It's amazing how many people do not have access to the internet. The Las Vegas Review Journal has partnerships with the schools and the libraries and we provide free access to our newspapers so people can access those resources.

Bruce Turner: I agree with the concerns that have been brought up about the nature of a general public notice. I believe, at minimum, there needs to be one statewide website that has specific search functions for different localities. This would help small business owners, contractors and the public. I share the concern for removing notices from the libraries.

For reviewing purposes I find it handy to have lines so you can refer to them line by line.

Barry Smith: I also want to make a comment and explain how our statewide website works. You can use specific search criteria on the website and you can sign up for email alerts by putting in a keyword. If any notices that come up with that keyword you will receive an email notice.

There were no more comments or questions from the public on R015-17.

R014-17 SUMMARY

Mr. Dragoni explained that the petition is in response to the Volkswagen settlement. He explained the timeline of the settlement and the mitigation plan. The NDEP is still waiting on the finalization of the Trustee. Once the Trustee is named, the State of Nevada will submit paperwork to be named as a Beneficiary. Once that's done, the State will be able to receive the money that has been allocated to mitigate NO_x emissions. One of the requirements to apply as the Beneficiary is that the State will still allow vehicles with installed defeat devices to be registered and sold in the State of Nevada. There's a provision in the Nevada Administrative Code (NAC) that forbids this so the NDEP and the Department of Motor Vehicles (DMV) are proposing to amend the NAC to provide an exception for these vehicles. The proposed amendments will allow the State to apply to become a Beneficiary and to start receiving mitigations funds. The consent decree mandates that at least 85% of the 2.0 liter vehicles equipped with a defeat device will need to be off the market by June 2019 either by being fixed or purchased back by Volkswagen. The proposed amendments do not affect how the funds will be distributed. The proposed amendments only allow the State to apply to become a Beneficiary.

COMMENTS AND QUESTIONS

Bruce Turner: The language talks about subject to a settlement agreement. I read this to apply to future settlement agreements in which this sort of agreement might be made.

Danilo Dragoni: You are correct that the proposed amendments do not constrain the NDEP to just the Volkswagen settlement.

There were no more comments or questions from the public on R014-17.

ADJOURNMENT

The Workshop was adjourned at 9:40 a.m.