

Permanent Regulation - Informational Statement

A Regulation Relating to Standards for Water Quality

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R093-13

Regulation R093-13: This regulation revises NAC 445A by removing waterbodies, or portions of waterbodies, pertaining to State Water Quality Standards on Federal Indian Reservations.

1. Need for Regulation: The Nevada Division of Environmental Protection (NDEP) is delegated to administer the Clean Water Act (CWA) in Nevada. During the 1970s, when Nevada was establishing its water quality standards program, standards were set for several waterbodies located on Federal Indian Reservations. In 1983, the Federal government established a federal Indian policy to treat Tribal governments on a government-to-government basis, and to support the principle of self-determination and local decision making by Indian Tribes. Section 518(e) of the CWA was added as part of the 1987 Amendments. This section authorizes the United States Environmental Protection Agency to treat federally recognized Indian Tribes in a similar manner as states for certain provisions of the CWA, including the water quality standards program. Additionally, federal court rulings and the Nevada Attorney General uphold the position that States do not have authority to undertake or implement environmental regulations on Tribal lands.

The regulation changes are needed as Nevada has no legal authority to regulate water quality on Tribal lands.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

NDEP solicited public comment by distributing the draft rationale and proposed regulations via email to approximately 200 stakeholders and posting on the NDEP webpage. Notification of upcoming workshops was published in the Carson Appeal, Reno Gazette Journal, Elko Daily Free Press and Las Vegas Review Journal. Three public workshops were held as shown below.

August 19, 2013
Carson City
Richard H. Bryan State Office Building
901 South Stewart Street

Multipurpose Room, 1st Floor

August 26, 2013
Las Vegas
Clark County Wetlands Park Nature Center
7050 E. Wetlands Park Lane

August 29, 2013
Elko
Elko County Library Meeting Room
720 Court Street

Thirteen, three and two people attended the Carson City, Las Vegas and Elko workshops, respectively. No attendees expressed opposition to the proposed regulations.

Recordings of the workshops are posted on the SEC website at:
http://sec.nv.gov/main/hearing_1213.htm

Following the workshops, the SEC held a formal regulatory hearing on December 4, 2013 at the Nevada Department of Conservation and Natural Resources on Stewart Street in Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of NDEP in Las Vegas, at the Division of Minerals in Carson City, at the Department of Wildlife in Reno, on the LCB website and was sent to the SEC mailing list.

The public notice and the proposed permanent regulation, R093-13, were posted at the locations noted above, and additionally, were made available at county libraries throughout the state.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1213.htm .

One comment letter was submitted to the SEC in opposition of the proposed regulation. The same individual who submitted the letter also testified at the hearing (See below).

The letter alleges that the proposed regulation relinquishes Nevada's authority to regulate water quality on Federal Indian Reservations to the Federal government. NDEP's response is that Nevada has no authority to regulate water quality on Tribal lands. R093-13 removes regulations that have no legal basis.

The letter also discusses the terms "navigable waters" and "waters of the United States" and refers to the U.S. Supreme Court SWANCC (2001) and Rapanos (2006)

decisions. NDEP's response is that although the issue of jurisdictional waters is of high importance, it is not relevant to the petition to remove water quality standards from waterbodies located on tribal lands.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended December 4, 2013 hearing: 26 (approximately)
- (b) Testified on this Petition at the hearing: 2 (NDEP and one member of public)
- (c) Submitted to the agency written comments: 1

The same person who submitted written comments also testified:

Paul Bottari
Elko County Association of Realtors
557 West Silver St. Suite 201B, Elko, NV 89801
(775) 738-2395
paul@bottarirealty.com

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through e-mail, the public workshop, at the December 4th Commission hearing and as noted in Number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted without changes as the SEC determined that the comments received did not necessitate a change (see Number 2 above).

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

The proposed revisions do not regulate business; therefore, they are not expected to have any direct economic effect on the regulated community both immediately and long term.

7. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional costs to the agency for enforcement of the proposed regulation.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the

duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not duplicate any other federal, state or local regulation.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than any federal regulation or guidance.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not address specific fees.