

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Workshop to Discuss Amendments to NAC 445B
Air Controls: Air Pollution

November 26, 2013
9:00 AM

Nevada Dept. of Transportation
1263 S. Stewart St.
3rd Floor Conference Room
Carson City, Nevada

MEETING NOTES

ATTENDEES:

Workshop Chairs: Rob Bamford, Chief, Bureau of Air Pollution Control (BAPC)
Jasmine Mehta, Chief, Bureau of Air Quality Planning (BAQP)

NDEP Staff:

Adele Malone, Supervisor, Planning and Modeling Branch, BAQP
Patricia Bobo, Planning and Modeling Branch, BAQP
Danilo Dragoni, Supervisor, Emissions Auditing Branch, BAQP

Public:

Allen Biaggi, Nevada Mining Association	Starla Lacy, NV Energy
Joe Beetler, Newmont	Dennis Laybourn, Newmont
Louis Bernarconi, Broadbent	Guy Mamer, PNAC
David Bruketta, Carson City	Aaron Mann, Redhorse
Cindi Byrd, Nevada Iron	Jesse Mandoki, TRGX
Gary Fowkes, A & K	Stephen McKay, US NAVY-NAS Fallon
Tom Greco, Cor...	Scott McNulty, Broadbent
Jason Grimes, DFA	Randy Peterson, Ormat
Tom Herschbach, Pyramid Mat.	William Rieger, Fortifiber Corp.
Tara Hess, Washoe Tribe of NV & CA	Mike Robinson, SMC
Bart Hiatt, A & K	Thomas Thiel, Dura-Bond Bearing
Jack Hisey, A & K	Mike Tomko, Nevada Mining Association
Edgard Hitti, PNAC	Ken Worthan, Eagle Peak Rock & Paving, Inc.
Aaron Hoberg, JBR Environmental	Dave Yohey, Bango Refining
Christopher Jim, Round Mountain Gold	Rebecca __, Environmental Manager, US Ecology Nevada
Denise Kennedy, Holland & Hart	Terry __, __
Larry Kennedy, Kinross-RMGC	

CALL TO ORDER:

Mr. Bamford called the meeting to order at 9:05 a.m. and explained that the purpose of the workshop was to solicit comments on proposed amendments to Nevada Administrative Code (NAC) 445B.22097, "Standards of quality for ambient air." This regulation contains both the Nevada ambient air quality standards and the national ambient air quality standards (NAAQS). The Nevada Division of Environmental Protection (NDEP) is proposing to revise the Nevada side of the standards table to further align it with the current NAAQS. The proposed regulation revises the nitrogen dioxide (NO₂), sulfur dioxide (SO₂) and fine particulate matter (PM_{2.5}) standards in the Nevada side of the standards table to parallel the federal standards.

Mr. Bamford asked each person in the audience to introduce themselves and state their interest in the meeting.

SUMMARY:

Mr. Bamford gave a power point presentation that provided some background on NAAQS and state implementation plans (SIP), explained why amendments to the NDEP's minor new source review (NSR) program are necessary, who might be impacted and possible solutions for impacted sources. The NDEP is required by federal law to ensure that its SIP provides for the implementation, maintenance and enforcement of a new or revised NAAQS within three years of its promulgation. He noted that the U.S. Environmental Protection Agency (USEPA) had identified deficiencies in Nevada's state plan to implement the NAAQS and would be required to impose a federal implementation plan (FIP), if Nevada did not revise its NSR program to address the PM_{2.5}, NO₂ and SO₂ NAAQS.

The PowerPoint presentation will be made available with the workshop minutes.

A discussion of the proposed amendments ensued. A summary of the main comments and questions follows.

Mr. Tomko: Commented that the federal standards in NAC 445B.22097 seem almost to be informational only, given that the Nevada standards are what you look at and evaluate in making a determination on whether to issue a permit. With major NSR you're dealing with NAAQS; however, 40 CFR 52.21 effectively incorporates that. You could almost drop the federal standards from the table.

Ms. Mehta: Responded that the federal standards are important. If you look at the footnotes to the table, you see that the federal standards are what NDEP uses for attainment and nonattainment designation determinations.

Mr. Bamford: Also, USEPA says in state rules and in SIPs states need to recognize the current federal standards.

Unidentified Attendee: Asked what size engine [diesel generator] does the NDEP think will violate 1-hour NO₂ standard.

Mr. Bamford: Replied that it depends on a number of factors. Modeling evaluates whether you are protective of *public* health, so fence line plays a role. If your stack is in the middle of a large property, you have more room. We're looking at public access levels. So, fence line, stack height and facility location are key factors.

Mr. Mann: Commented that USEPA has given quite a bit of latitude to the states for emergency generators. Sometimes they can even exempt them from the 1-hour standards because they don't run very often. Has the NDEP thought about maybe a threshold of hours?

Mr. Bamford: Said he hadn't heard that, yet. Regarding maintenance 100-hours, he has heard that you may have some flexibility in the model, such as the number of hours you run an emergency generator, number of days, time of year. USEPA has also been more flexible about the ratio of NO_x to NO₂, or how you determine the emissions that you put into the model.

Mr. Tomko: Commented that modeling under PSD, where you model all of the sources that are in an area of significant impact, uses the actual emissions for purposes of those inputs. But for the source that you're modeling, you use the potential emissions. The rationale is that for the new source there isn't the operating history; but for the existing source we do have that history, and there's often a significant margin between what you're authorized to emit vs. what you're actually emitting. He asked whether the larger, existing sources that do have an emissions history, could use – for those existing units that aren't being modified – actual emissions, and use potential emissions for the new source or newly modified part of the source (emission units) in order to get a more realistic assessment of impact.

Mr. Bamford: Responded by suggesting that before modeling for a permit application, the applicant submit a protocol to the NDEP and request a review. The review is free. That will help ensure that the model matches the expectations and the requirements. If you ever have a question on applicability, the NDEP has a regulation that says if you submit a question in writing asking if something is applicable to you, we'll respond within 30 days.

Continuing with the slide presentation, Mr. Bamford discussed possible solutions for sources to meet the revised standards. One possibility would be to reduce the emission limits in the permit to make them closer to actual emissions. Many permit limits are much higher than actual emissions.

Mr. Biaggi: Commented that he thought it takes a formal permit modification to reduce PTE.

Mr. Bamford: Said that was open for discussion. By definition, a modification means something that has the potential to increase emissions. On the one hand, the NDEP has had some trouble with auditors for issuing permit revisions without having an application and a fee. On the other hand, it is clear that reducing emission limits does not have the potential to increase emissions, so this may not qualify as a modification. It may just be a non-permit change. We want to investigate that.

Mr. McNulty: Had a question regarding PM_{2.5} and condensable emissions. He wondered if USEPA was pushing the NDEP in that direction.

Mr. Bamford: Responded that USEPA was pushing for states to include condensables. Right now the NDEP does not require people to report PM_{2.5}. The table in the slide presentation came from USEPA's NEI data.

Ms. Kennedy: In terms of the timing requirements imposed by USEPA for addressing the new NAAQS by October 2014... is that for all three pollutants or is it just for PM_{2.5}?

Mr. Bamford: Replied that it is specific to PM_{2.5} – and lead, which the NDEP has already addressed. For NO₂ and SO₂, USEPA did go on record in the FR saying if the NDEP does not revise its implementation of those NAAQS, the state will be deficient on thus and such a date – and that date has passed. If it is not fixed, USEPA may over-file.

Mr. Peterson: Asked if we trigger modeling for one pollutant, are we required to model for all.

Mr. Bamford: Replied, yes, currently that is how the regulations are written.

Mr. Peterson: Asked how precursors are handled, for example, VOCs in the ozone standard.

Mr. Bamford: Answered that currently, the NDEP uses the Scheffe screen, which looks at the availability of NO_x and VOCs to form ozone. Regional modeling for ozone is not something the NDEP is doing right now.

Mr. Tomko: In regards to the question by Mr. Peterson about “trigger for one pollutant-model for all,” my understanding of NAC 445B.310 is that it's on a pollutant-by-pollutant basis, which would seem to have some logic. It wouldn't seem necessary to model for all, if only one is affected.

Mr. Bamford: Replied that the NDEP has always done a one-in, all-in per 445B.310 and 311, and that is how the current regulations are written.

Mr. Tomko: Noted that we're anticipating a new ozone standard. Ozone is really not amenable to source-specific modeling. If there is a new standard, and the NDEP puts it into the Nevada side of the table, VOCs and NO_x will trigger the ozone analysis. The standard may be so low that it's not attainable. As new NAAQS are issued, does the NDEP think that the approach that's being proposed here for PM_{2.5}, NO₂ and SO₂ will be used for new pollutants?

Mr. Bamford: Stated not necessarily. As we look at ozone there isn't a readily available, usable single-facility model that you can run for ozone. It's really a regional exercise, and it's much more rigorous. Addressing a reduced ozone standard won't be a Nevada-only challenge, but a challenge for the entire West Coast.

Ms. Mehta: Noted that the NDEP has already talked to EPA about ozone and long-range transport issues. Because of its geography, Nevada is uniquely situated when it comes to attainment/non-attainment for any lower ozone standards.

Mr. Bamford: Pointed out that the NDEP has commissioned a 5-year study by UNR on ozone in rural Nevada, because we believe a lot of it is coming from outside the State. No matter what you do within the State, you are going to get elevated values. UNR has been doing a data collection, monitoring/modeling exercise to quantify sources of ozone in Nevada. Strategies we propose to address a new standard will be based on something that's actually achievable within the State and will make a difference. We are trying to get ahead of ozone with that research, and there will be stakeholder and public participation opportunities to work on ozone as we get closer.

Ms. Kennedy: Stated that she had a proposal to present on behalf of Newmont. Barrick and the NvMA support the proposal, also, which is trying to find some middle ground short of having to have every small modification and every small source have to model with respect to the standards. The proposal is based on something that EPA has suggested is approvable – to use Significant Emission Rates (SER) as modeling thresholds for the new/revised standards. The concept is that if you're proposing a new source or making a modification that increases the emissions of any of those three pollutants (PM_{2.5}, NO₂ and SO₂), but not above the SER, you would not have to model for the new NO₂ and SO₂ standards. For SO₂, you would still have to model for the existing standards; the same with the annual NO₂ standards, for the time being, at least. She proposed that NAC 445B. 311(g), which defines the dispersion analysis, be revised to omit the dispersion analysis requirement for any pollutant that is below the applicable threshold. The proposal would also clarify that you only model for the pollutant(s) that triggers the threshold(s), not all pollutants.

Mr. Bamford: Responded that currently, if a source emits more than 25 tpy of one pollutant, you model for all. Newmont is proposing that we add thresholds into the regulation. The thresholds are called SERs, and are from the PSD program. The SERs are already recognized as being a de minimis, or very small, amount. There is precedent for EPA approving them into states' minor NSR programs. The NDEP will evaluate this industry proposal and ask EPA if adding thresholds could have unintended effects or impact the FIP timeline. Mr. Bamford further noted that the current regulations provide an opportunity for sources to request NDEP to conduct the modeling for them and, conversely, the Director has the discretion to request modeling even if the new source or modification is below the applicable threshold.

Mr. Bamford also noted that we have to consider the question of whether introducing thresholds would be backsliding or would affect the NDEP's other strategies for attaining and maintaining both Nevada and federal ambient air quality standards.

Ms. Kennedy: Pointed out that the 40 ton per year (tpy) SER thresholds would only apply to the new 1-hour NO_x and SO_x standards; the 25 tpy threshold would continue to apply to the existing standards. However, the change from in-for-one-in-for-all to pollutant-by-pollutant would apply across the board to all of the standards. Look at that language, because if you are not increasing emissions for a pollutant, then why model? Again, you're still doing an environmental evaluation but Newmont's proposed revisions further define when a dispersion analysis needs to be done.

Mr. Bamford: Noted that the NDEP's minor NSR program is model-centric. Why do we do an "in-for-one-in-for-all?" Historically, when we started implementing the state regulations, industry did not want default control requirements. They wanted regulations that would require

that they meet the standards, but allow them the flexibility to accomplish that in whatever fashion best suited their situation. (This excludes NSPS and NESHAP requirements.) So, we developed a model-heavy approach in order to give the maximum flexibility on control selections or maybe no control selections. Part of that trade-off is that we are model-centric to show that we are protective. We are in attainment for all of our standards right now and not a lot of states can say that. The model-centric in-for-one-in-for-all may seem intense, but we've also managed to keep in attainment. This gives us a lot of flexibility and leveraging power, too.

Mr. Bamford provided some background on a topic raised at an earlier meeting by Mr. Tomko. Mr. Tomko pointed to a recent minor NSR program that USEPA crafted for Indian Country, which gives tribes substantial discretion in deciding what has to be modeled. He felt that the States should get similar discretion, because the Clean Air Act (CAA) contemplates that tribes are like states as far as implementing minor NSR. The NDEP is skeptical of introducing Director's discretion, however, because in the past USEPA made us remove agency discretion from our regulations, unless it is accompanied by objective criteria for applying the discretion. When the NDEP broached the question of Director's discretion with USEPA, USEPA's first reaction was that it wouldn't be approvable. USEPA said there was a difference between an EPA-approved *state* minor NSR program and an *Indian nation* program. With the state program, USEPA cannot compel applicants to conduct modeling to evaluate the potential air quality impacts, whereas with the Indian nations, USEPA reviews the permits and has veto rights.

Ms. Mehta: Suggested that USEPA has more oversight over the tribal minor NSR programs. They are ultimately the authority. In our State program, USEPA doesn't see the minor NSR permits.

Ms. Hess: Noted that the tribes are now having to take the same steps as states.

Mr. Biaggi: Said he was under the impression that some of the larger tribal entities have a direct delegation authority like the states do for their air programs, and consequently there is not a USEPA review process.

Mr. Bamford: Said some of the large Nations have some sophisticated groups that take more of an ownership role. Others work with USEPA for some of their technical support.

Mr. Biaggi: Commented that such delegation deflates the argument that USEPA is making.

Ms. Mehta: Replied that the arguments they were making specifically apply to the Indian Country rule. I'm not sure, like in the Navajo Nation, if they have a provision that says with this minor NSR you have discretion. I believe they have to abide by objective criteria as well.

Mr. Bamford: Commented that basically, the impression we got from USEPA was they're not excited about Director's discretion and would find it hard to approve.

Mr. Tomko: Disagreed with the points previously made, but would look to see what veto power USEPA ultimately has. Tribes can submit a program to USEPA using the model rule, which does not include the veto component, because the CAA treats them as equivalent to states for these

purposes. He believes the Indian Country rule creates a strong precedent supportive of state discretion. He does not conflate the discretion to determine whether or not modeling is required under a particular circumstance. The NDEP exercises discretion every day, and it's that kind of discretion that is appropriate. He pointed out that you always have the PSD backstop, which is there to capture the major modifications. On the resource issue, for some sources there is this question of why are we martialing these kinds of resources. You have engineers that could look at this information and make determinations as to whether or not we need to model. I think there are a number of ways to look at exercising discretion. There are tools, including previous modeling and monitoring. The discretionary approach has a lot of merit and utility and is a pragmatic, reasonable approach to these minor sources. What Ms. Kennedy has outlined is the middle ground approach to give us a little bit more leeway and flexibility. He doesn't believe there is an anti-backsliding argument that EPA can make in regards to the pollutant-by-pollutant proposal.

Mr. Rieger: Wondered when changes will go into code.

Ms. Mehta: Replied that, if the regulatory amendments were adopted by the SEC at the February hearing, the amendments would then be put on the agenda for the next Legislative Commission meeting. That body does not meet on a regular schedule, so it's hard to predict a timeline. If the Legislative Commission were to approve the amendments, they would become effective on the date of approval.

Mr. Rieger: Asked whether it was correct that for Class II permits the NDEP did not plan to go back and reopen permits to incorporate the new standards, but will wait until the renewal comes up?

Mr. Bamford: Said that was correct unless there is a modification.

An attendee asked when are we taking comments until and what's the best way to submit those.

Ms. Malone: Replied that they can continue giving us comments up through and at the SEC public hearing. However, we have to develop a proposal to submit to the SEC, which they give to the LCB for drafting. We will have to do that by early December because LCB gets 30 days for their drafting. Then, there will be a 30-day comment period prior to the February SEC hearing for the drafted proposal.

Mr. Bamford: Added that you can comment on the proposed changes prior to us presenting them to the SEC, and then you can comment on the SEC action as well. He recommended that comments be made sooner rather than later, so the NDEP could respond before proposing amendments to the SEC. He encouraged folks to comment. He said we would talk to EPA today and ask them about what adding thresholds would do to the submittal.

Unidentified Attendee: Questioned what the best way to track the NDEP's progress was.

Ms. Mehta: Responded that we have it posted on the NDEP website right now. The rules that would go to the SEC will be posted on SEC's website. Also, everything has to be posted on

LCB's website.

Mr. Bamford: Responded that if you want to email Ms. Mehta or myself, we can direct you or answer your questions. If anyone would like the PowerPoint presentation, just send us an email and we'll send it to you. Ms. Malone's email is also available on the workshop notice.

There were no more comments or questions from the public. Mr. Bamford reminded the attendees the next step will be the February 12, 2014 SEC Hearing.

ADJOURNMENT:

The Workshop was adjourned at 11:40 a.m.