

**Nevada State Environmental Commission**  
**Agenda**  
**February 26, 2004**

The Nevada State Environmental Commission (SEC) will conduct a public hearing commencing at 9:30 a.m. on Thursday, February 26, 2004, at the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Clark County Public Library and the Grant Sawyer Office Building in Las Vegas, the Department of Wildlife and the Washoe County Library in Reno, and the Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. The Public Notice for this hearing was published in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – January 28, February 4, and February 11, 2004. The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

**I(a). Discussion of Agenda Items**

**I(b). Approval of minutes from the September 18, 2003 hearing. \* ACTION**

**II. Regulatory Petitions \* ACTION**

**III. Settlement Agreements on Air Quality Violations \* ACTION**

**IV. Public Comments**

**V. Additional Information**

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**II. Regulatory Petitions**

● **Air Pollution Control Petitions**

**1.) Petition 2003-07<sup>(a)</sup> - LCB File No. R-198-03: This Petition proposes changes to the permitting provisions of NAC 445B - Air Pollution Control.** The amendments will add an opacity limit and reduce the time allowed for exceptions to visible emissions from steam generating units; remove the state visibility standard; make violations of the fugitive dust regulations a major violation after the first offense; and revise the procedures for determining when an application for a Class I/PSD operating permit is considered complete. The amendments will require public notification of certain minor revisions to Class I operating permits, as well as public notification of certain Class II operating permit applications and revisions to allow public comment pursuant to Clean Air Act Title I.

Accordingly, the amendments will increase fees for processing Class I and II operating permit revisions and renewals to cover the costs of implementing the public notification requirements. The amendments will also increase timelines for issuance of such permits and revisions, depending on the new public notification requirements. For Class II and Class III sources, the amendments will clarify how much -- in advance of the permit expiration date -- a renewal application must be submitted. The amendments will also remove ambiguity with respect to the Director's discretion in implementing the regulations dealing with incinerator burning and schedules for compliance. Finally, several clarifications, technical corrections and updates are proposed.

These amendments are necessary for the following reasons: Many of the amendments align the NAC with Nevada's Applicable State Implementation Plan (SIP) and will, thereby, allow USEPA to approve an updated

SIP. Federal regulation requires public notice of permitting actions for minor sources of air pollutants and minor revisions to Class I operating permits. Amending the renewal timeline for Class II operating permits ensures consistency with revisions to NAC 445B.3457. The amendments also ensure that Class II and Class III renewals are submitted with sufficient time for processing before they expire. Reassigning fugitive dust into the major violations category will allow NDEP to achieve compliance with the regulation earlier in the process. Revising the process for determining the completeness of a permit application for a source subject to PSD requirements will prevent an automatic triggering of the PSD increment if the Director fails to act within 30 days after receipt of an application. The recent adoption of the national regional haze rule, the visibility standard is removed because it is no longer necessary.

While the proposed amendments will have no measurable economic effects on the public, the proposed changes will affect both major and minor stationary sources of air pollution. Since there will be additional costs to the agency for implementing the proposed public notification requirements, fees will increase by \$500 if the public notice includes publication in statewide newspapers and mailing to interested parties and by \$350 if the public notice can be sent electronically. The amendments being proposed will not restrict the formation, operation, or expansion of the regulated industry, nor do they overlap or duplicate any regulations of other state or government agencies. The amendments are also no more stringent than what is established by federal law.

<sup>(a)</sup>**Note:** The 30 day public notice for this regulatory hearing listed Petition numbers 12 & 14; the substance of those Petitions are now included in the above referenced Petition number 2003-07.

## ● **Air Quality Planning Petitions**

**2.) Petition 2003-11 - LCB File No. R-232-03: This Petition proposes changes to NAC 486A: Fleets Use of Alternative Fuels.** The amendment reflects changes made to NRS 486A made during the 2003 legislative session (AB 237). The changes include removal of low-sulfur diesel fuel from the list of designated alternative fuels and replacement with three diesel fuel variants; at the end of 2006 ultra low-sulfur diesel and California diesel sunset. Also, the petition removes the definition of “certified vehicle” and all references to certified vehicles in NAC 486A. The definition of “dedicated alternative fuel motor vehicle” was amended in statute to include vehicles certified by the EPA as being in compliance with ultra low-emission vehicle standards regardless of the type of fuel they use. By reference to the amended NRS (486A.060), a “certified vehicle” is now included in the NAC definition of “alternative fuel vehicle,” making a separate definition of “certified vehicle” in the NAC unnecessary.

While regulated business and industry are unaffected by these changes, the proposed amendments will have a small economic effect (related to fuel costs) on State and local government fleets that acquire diesel fueled vehicles to comply with this regulation beginning with State Fiscal Year 2004. The regulations will otherwise not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

**3.) Petition 2003-13 - LCB File No. R- 237-03: This Petition proposes changes to NAC 445B.22067, Open Burning.** The amendments would prohibit the burning of household trash at single-family residences within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. Open burning of yard waste and untreated wood waste would continue to be allowed in these areas. The amendments would also prohibit the burning of rubbish by agricultural operations within 10 miles of trash disposal, collection or transfer sites, or in areas with trash collection services. The amendments would further prohibit residents of certain towns and cities from obtaining a variance from the NDEP to burn waste, if local authorities do not authorize it. Burning of yard waste and untreated wood waste is allowed in these areas if authorized by an officer of the state or its political subdivisions and concurred with by the director. The amendments are necessary to protect human health from the harmful effects of toxic pollutants such as dioxin that are produced when household waste or rubbish is

burned. Removing NDEP's authority to issue open burning variances is necessary to ensure consistency with open burning decisions made by local authorities.

These amendments will have an economic impact on agricultural operations that use open burning to dispose of waste. Costs will vary depending on the volume of trash created by individual operations and the rates charged by the local collection and disposal service. Cost impacts will be similar for single-family residences. There will be no additional costs to the agency for enforcement of these amendments, the regulations do not overlap or duplicate other state requirements, and the amendments do not address fees.

## ● **Hazardous Waste Petitions**

**4.) Petition 2003-06 - LCB File No. R-126-03: The proposed amendment is to the Nevada Hazardous Waste Regulations.** The State of Nevada is authorized by the United States Environmental Protection Agency (US EPA) to enforce federal hazardous waste regulations. Between July 1, 2002 and July 1, 2003, the EPA approved revisions to existing federal hazardous waste regulations and published them in the Federal Register. The State of Nevada is required to modify its state regulations accordingly. The Nevada Division of Environmental Protection (NDEP) is proposing to incorporate these federal revisions into state regulations by adopting the applicable sections of the Federal Register as it existed on July 1, 2003. This regulatory petition affects NAC 444 and 445. Updating these regulations will allow NDEP to continue to implement the RCRA program in lieu of the federal government.

The proposed regulations are not anticipated to have any significant economic impact on Nevada businesses, but conversely should make it easier for affected business to comply by simplifying the requirements. The regulations are not expected to have any economic effect on the public; they will not duplicate or overlap existing federal regulations; and they do not include any new provisions which are more stringent than federal regulations. The regulations will not provide for a new fee nor increase an existing fee.

**5.) Petition 2003-08 - LCB File No. R-208-03: The proposed amendment is to the hazardous waste regulations, NAC Chapter 444.** The Division is seeking specific limited changes to the state's definition of hazardous waste as defined at NAC 444.843. These changes establish and define two (2) subcategories of waste that are generated outside the state and will provide for more uniform regulatory treatment and equitable assignment of fees when such wastes are managed in Nevada. The two subcategories identified are remediation wastes and federally delisted wastes. The proposed amendments pertain to NAC 444.842 to 444.960, inclusive. The proposed amendments are needed to mitigate the effects of unequal regulatory treatment of some types of "hazardous waste" as currently defined and regulated by other states (namely, California) when compared to Nevada. The proposed regulatory action will allow Nevada to adjust (i.e., reduce) or amend the current fee structure, as it applies to wastes that are no longer hazardous wastes, such that hazardous waste disposal facilities in Nevada can more evenly compete for wastes in these categories.

The proposed regulations will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. These regulations are more stringent than the federal regulation in that the federal regulations do not provide for, or establish, fees for the disposal of waste. The proposed regulations are less stringent than current state regulations defining a hazardous waste, but are at least as stringent as the federal definition of hazardous waste.

All fees collected pursuant to NAC 444.8452 regardless of the impact of the proposed change to the state's definition of hazardous waste, will continue to be deposited in the hazardous waste management fund and used for the purposes established by NRS 459.535. Although the Public Service Commission and Division of Emergency Management will not receive funds from fees paid on the new proposed waste subcategories, these changes should prolong the expected life and productive capacity of hazardous waste disposal facilities in Nevada. Additionally, continued operation of these facilities is a benefit to businesses that are

located in Nevada and generate hazardous waste requiring disposal.

- **Water Quality Petition**

**6.) Petition 2003-09 - LCB File No. R- 226-03: This petition addresses proposed changes to the water quality standards for the Class Waters contained in the Nevada Administrative Code (NAC) 445A.124 through 445A.127.** Under section 303 of the Clean Water Act and 40 CFR 131, States have responsibility for setting, reviewing and revising water quality standards. Proposed revisions include changes to existing formats for listing water quality standards in the NAC's. Proposed changes will make the tables contained in the NAC's easier to read and understand. NDEP is also proposing a revision of the existing pH criteria, and total phosphorus criteria for various Class Waters throughout the state. Other revisions include corrections for names and locations of certain water bodies including clarification of the extent of the "reaches" as well as revisions based on the need to clarify the appropriate trout or nontrout standards for various water bodies

The proposed regulations will not have an economic impacts, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees

- **SEC Rules of Practice Petition**

**7.) Petition 2003-10 - LCB File No. R- 227-03: This Petition is an amendment to the State Environmental Commission's (SEC's) Rules of Practice; NAC 445B.875 to 445B.899.** The new amendments allow the following provisions. The SEC can order briefs to be filed before or after a hearing; it can allow a party to intervene in a proceeding by filing a written petition, along with specifying time periods and minimum content of such petitions. The SEC can further allow interveners to appear in proceedings and/or be dismissed from proceedings, where no substantial direct interest or public interest is apparent. The amendments also allow the SEC to consolidate a proceeding, where issues are substantially the same and rights of parties are not prejudice; in such proceeding, moreover, the SEC may determine the order in which the parties introduce evidence and present testimony as well as limit redundant testimony. The amendments further allow the SEC to take any action to maintain order during a hearing, require hearings to be recorded electronically, and where a court reporter is requested by a party, the cost for such services are paid for by the requesting party.

The proposed regulations (Petition 2003-09 & -10) will not have an economic impact, either immediate or long term, on the regulated industry. There will be no additional costs to the agency for enforcement of these amendments and the regulations do not overlap or duplicate any regulations of other state or government agencies. The amended regulations are no more stringent than what is established by federal law and they do not address fees.

### **III Settlement Agreements on Air Quality Violations \* ACTION**

- A. American Borate Company; Notice of Alleged Violation Nos. 1805, 1806, 1807, 1808, 1809, 1810 and 1811
- B. American Cement and Aggregate; Notice of Alleged Violation Nos. 1814, 1815, 1816 and 1817
- C. Steve Brown Construction; Notice of Alleged Violation No. 1771
- D. Brown Brothers Construction; Notice of Alleged Violation No. 1788
- E. Canyon Construction; Notice of Alleged Violation No. 1802
- F. Capitol City Concrete; Notice of Alleged Violation No. 1789
- G. Chemetall Foote Corporation; Notice of Alleged Violation Nos. 1800 and 1801

- H. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1776
- I. Fisher Sand & Gravel Company; Notice of Alleged Violation No. 1803
- J. High Sierra Concrete; Notice of Alleged Violation No. 1777
- K. Johnson Development, LLC; Notice of Alleged Violation No. 1787
- L. Ron Murphy Construction; Notice of Alleged Violation No. 1818
- M. Newmont Mining Corporation – Lone Tree Mine; Notice of Alleged Violation No. 1779
- N. Newmont Mining Corporation – Twin Creeks Mine; Notice of Alleged Violation Nos. 1785, 1786 and 1793
- O. Northeastern Nevada Regional Hospital; Notice of Alleged Violation Nos. 1790 and 1791
- P. Specialty Clays Corporation; Notice of Alleged Violation No. 1798
- Q. Wulfenstein Construction; Notice of Alleged Violation No. 1796

#### **IV. Public Comments**

#### **V. Additional Information**

Copies of the proposed regulations may be obtained by calling the Executive Secretary, John B. Walker at (775) 687-9308. The text of the proposed regulations are also available in the State of Nevada's Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau, pursuant to NRS 233B.0653. ( see: <http://www.leg.state.nv.us/Register/> )

In addition, the State Environmental Commission develops an Internet webpage for each SEC regulatory hearing; the above referenced proposed regulations and other supporting documentation, including links to previously held public workshops, are available on the SEC Website:

- February 26, 2004 Webpage: <http://www.sec.nv.gov/main/hearing0204.htm>
- SEC Homepage: <http://www.sec.nv.gov/index.htm> .

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-9308, by 5:00 p.m. February 19, 2004.