

**Nevada State Environmental Commission
Agenda
August 19, 2004**

The State Environmental Commission (SEC) will hold a public hearing **at 10:00 A.M. on Thursday, August 19, 2004, at 401 North Carson Street, Carson City, NV (i.e., The Laxalt Building).**

This agenda has been posted at the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Environmental Protection and Department of Museums, Library and Arts in Carson City. The Public Notice for this hearing was published on July 19, July 26, and August 9, 2004 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

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. Approval of minutes from the February 26, 2004 hearing * ACTION

II. Acknowledgement of newly appointed Commissioners

III. Regulatory Petitions * ACTION

(1) Petition 2004-22 – LCB File No. R 125-04: New Source Review (NSR), Prevention of Significant Deterioration (PSD) rule, Ozone Nonattainment rule, and Minor Revision of Permit:

This regulatory petition amends NAC 445B.001-.3497. The regulation incorporates revisions to the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) rule. The regulation also incorporates revision to certain permitting provisions for a major stationary source and/or a major modification in a basic nonattainment area for ozone. As well, the regulation integrates new federal NSR Reforms into State regulations for PSD sources. This is necessary to ensure consistency with the federal program and to ensure the State of Nevada's ability to implement these new provisions. The ozone nonattainment amendments are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004 the US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. This designation were effective June 15, 2004. The proposed regulations provide specific criteria for new major stationary sources that are locating in, or for sources making major modifications in, an area designated as nonattainment for the 8-hour ozone standard.

The regulatory petition applies only to major stationary sources of air pollution. The NSR Reforms would affect approximately 12 facilities. By adopting the proposed changes, NDEP will be able to regain full delegation of the PSD program in Nevada from the US EPA. Once NDEP has received full delegation, affected sources wishing to apply for permits for new facilities or modifications to their existing facility will be able to work directly with the state rather than having to go through the US EPA to receive permit approvals. Specific fees are proposed to cover costs associated with implementing the NSR flexibility provisions. These costs will be born by the sources requesting any of the new NSR reforms at the time they modify their existing permit.

This regulatory petition also contains language that (a) updates certain definition in the regulations, and (b) will shorten the timeline for processing minor revisions to Class I operating permits. Specifically, the regulation streamlines the public notification provisions of NAC 445B.3425 and removes definitions that are no longer used in NAC 445B. The regulation removes duplicate requirements for public notification and participation in cases where (a) the Director drafts proposed conditions for an operating permit because the applicant's proposed conditions were not adequate,

and (b) the Administrator of the U.S. EPA objects to the proposed revision, and the Director subsequently revises the proposed revision.

(2) Petition 2004-16 – LCB File No. R061-04: Certification of Environmental Laboratories: This regulatory petition proposes the repeal of existing regulations and adoption of new revised regulations. The petition repeals Nevada Administrative Code (NAC) 445A.055 through 445A.067 and adopts NAC 445A.0552 to NAC 445A.067, (i.e., Certification of Environmental Laboratories). The authority for these regulations are defined under Nevada Revised Statutes (NRS) 445A.425, 445A.428.

Currently, the regulations for certification of laboratories to analyze substances in water – as per the Federal Clean Water Act and the Federal Safe Drinking Water Act – are split between the Nevada Division of Environmental Protection (NDEP) and Nevada State Health Division. After the last biennium, the laboratory certification program was moved from the State Health Division to the NDEP. In part, this regulatory petition is needed to make the necessary language adjustments in the NAC's to accommodate this change. Specifically, the new regulations retain the provisions previously established for certification of laboratories to analyze substances in wastewater, while adding provisions for laboratories to analyze substances in drinking water; the latter provision was previously administered by the Health Division. In addition, authority to certify laboratories to analyze substances in accordance with the Federal Resource Conservation and Recovery Act (RCRA) has now been acquired by the NDEP – per Senate Bill 58, NRS 445A.425, 445A.428. Hence, the new revised regulations add provisions for laboratories to analyze environmental samples for hazardous waste substances.

The regulatory petition will have only marginal economic effects and may include a slightly higher cost for some laboratories. Small laboratories will be less affected than the larger laboratories. A poll of the laboratories affected indicates that none of the in-state laboratories consider the change in fees to present a hardship, and respondents indicated a beneficial effect from the RCRA certification program. The new regulations will enable in-state laboratories to demonstrate RCRA certified status so they can participate in certain contracts. The lack of a certification program for RCRA has resulted in out-of-state laboratories obtaining an inordinate amount of RCRA work in Nevada.

Regarding fees, the new regulations do contain changes in the fee structure for participating laboratories. The changes would better balance the wastewater and drinking water programs based upon actual time and effort required to administer the programs as well as support the RCRA certification program. These fees have been coordinated so that equivalent activities among the three program areas will be proportionally cost allocated. The new fee structure will generate an additional \$92,000.00 per year. These funds will support operational costs of the laboratory certification program as well as support a third certification officer and a part-time administrative assistance.

(3) Petition 2004-15 – LCB File No. R063-04: Treated Effluent: This Petition is an amendment to the regulations governing the use of treated effluent; NAC 445A. 275 – 280. Specific amendments include restructuring the titling of the effluent categories, adding additional uses of treated effluent beyond irrigation, adding some definitions, and modifying the aerosol control regulation.

This regulatory amendment is needed to allow a wider use of treated effluent in the environment. Over the past decade the quality of treated effluent has significantly improved. The higher quality of effluent now allows increased uses of treated effluent for a variety of applications including cooling water, water features, street washing, etc. In addition, the demand for the use of treated effluent has increased over the last ten years as the State's urban areas continue to grow and water supplies become consumed. To allow for new applications of treated effluent, the above referenced regulations must be amended.

This regulatory amendment also proposes to make two word changes to the pretreatment regulations defined under Nevada Administrative Code (NAC) 445A.257. The amendment would strike the requirement for the Division of Environmental Protection (Division) to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program. The revision would allow the Division the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program.

At this time the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case by case basis.

(4) Petition 2004-18 – LCB File No. R079-04 Concentrated Animal Feed Operations (CAFO):

This regulatory petition proposes changes to the discharge permits and general permitting provisions of NAC 445A – Water Controls. The regulation amendments focus exclusively on defining and permitting concentrated animal feeding operations (CAFO). The regulations will revise the list of production facilities that are defined as potential CAFOs as well as adjust the animal threshold numbers at a facility to be defined as a CAFO. The regulations will also improve consistency between the State and federal CAFO definitions, eliminate the mixed animal calculation, require a designated CAFO to apply for a discharge permit within ninety days of designation, and create a \$700 CAFO general permit application and annual fee.

This regulatory petition will amend the Nevada Administrative Code to conform with revisions to the federal National Pollutant Discharge Elimination System (NPDES) regulations. In 1975, the US Environmental Protection Agency (US EPA) approved the State NPDES permit program and delegated NDEP's permitting authority to the State. To maintain this delegation, the State must adopt regulations that are at least as stringent as the federal regulations. On February 12, 2003, the US EPA promulgated a revised NPDES permit regulation and effluent limitation guidelines and standards for CAFOs. This regulatory petition will raise the Nevada NPDES program to the minimum standards to maintain delegation.

The regulations are not expected to increase the number of facilities requiring CAFO permits. The Division has not identified any newly defined production facilities, (e.g. immature swine, lambs, ducks, or chickens) that are large enough to be classified as CAFOs under the proposed regulations. There are no CAFOs permitted under the mixed animal calculation, therefore, the number of permits will not change as a result of the elimination of this calculation. The Division has the authority to require a permit of any agricultural or silvicultural activity that has been identified as a significant contributor of pollution. The proposed regulations will establish a ninety-day deadline from the date of notification for a designated facility to apply for a permit. Although higher than the current general permit fee, the proposed \$700 application and annual CAFO general permit fees are lower than the permit fees for an individual CAFO permit.

(5) Petition 2004-17 – LCB File No. R103-04 Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual

permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

(6) Petition 2004-19 – LCB File No. R084-04 Brownfields Cleanup Revolving Loan Fund: This regulatory petition proposes adoption of regulations governing the administration of a Brownfields Cleanup Revolving Loan Fund. The Nevada Division of Environmental Protection (NDEP) has received grant funding from the US Environmental Protection Agency (US EPA) to administer the fund. Funds will be used to address environmental cleanups conducted at Brownfield sites in Nevada. Brownfield sites, as defined in the federal “Small Business Liability Relief and Brownfields Revitalization Act,” mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant. Funds awarded to the NDEP are to be used to make low-interest loans to individuals or municipalities for the cleanup of these sites; a portion of the funds received may also be used to offer sub-grants to municipalities or non-profit groups. The proposed regulation, drafted pursuant to NRS 459.892, has been developed to outline the application requirements for the revolving loan fund.

The proposed regulation will not have any negative economic impacts, either immediate or long term, on the regulated industry. The regulation is intended to off-set the cost of environmental cleanups at contaminated sites to allow for redevelopment or reuse of property. The revolving loan fund will have beneficial economic impacts on property owners and local communities. Loan funds are intended to put underutilized properties back into productive use, thereby increasing tax revenues and employment opportunities.

IV. Settlement Agreements on Air Quality Violations* ACTION By Consent Calendar

- A. Hanse – Rice Inc. -- Notice of Alleged Violation Nos. 1836-1839**
- B. Mud Camp Mining LLC -- Notice of Alleged Violation Nos. 1832**
- C. Valley joist, Inc. – Notice of Alleged Violation Nos. 1828**
- D. W.E.S Construction. Inc – Notice of Alleged Violation Nos. 1830 - 1831**

V. Public Comments

VI. Additional Information

Copies of the proposed regulations may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet http://www.leg.state.nv.us/Register/indexes/2004_NAC_REGISTER_KEYWORD.htm .

In addition the State Environmental Commission maintains an Internet site at <http://www.sec.nv.gov/main/hearing081904.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. August 11, 2004.