



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission sec.nv.gov

901 South Stewart Street, Suite 4001 -- Carson City, Nevada 89701-5249

SEC Meeting Agenda February 11, 2009

The State Environmental Commission (SEC) has scheduled a regulatory hearing on Wednesday, February 11, 2009 at 10 a.m. The hearing will be conducted as a video conference in Carson City and Las Vegas. The hearing location in Carson City is the Bryan Building located at 901 South Stewart Street, (2nd floor Tahoe room). In Las Vegas the hearing will be held at the Nevada Division of Environmental Protection, 2030 E. Flamingo Rd. Suite 230.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions. 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.

1) Approval of minutes 11/12/08 SEC hearing * Action Item

2) Arsenic Rule Extensions *Action

Pursuant to the federal Safe Drinking Water Act and Nevada laws and regulations (i.e., NRS 445A.935 & NAC 445A.490.5), the State Environmental Commission (SEC) has the authority to grant Extensions to Exemptions previously issued by the SEC regarding the federally mandated standard for arsenic in drinking water (i.e., 10 parts per billion). In 2006 and 2007, the SEC granted sixty-four Exemptions to water purveyors in Nevada to extend the timeline for compliance with the federal arsenic rule until January 23, 2009.

At the November 12, 2008 hearing, the SEC considered testimony and accepted eligibility criteria proposed by the Nevada Division of Environmental Protection's Bureau of Safe Drinking Water (BSDW) for public water systems seeking Extensions to their original Arsenic Rule Exemptions. On that date, the SEC granted thirty-three 2-year Extensions for public water systems meeting certain eligibility criteria.

At this hearing, the SEC will act on BSDW recommendations for a similar 2-year Extension of the timeline for Arsenic Rule compliance for the Searchlight Water System. This is the only water system being considered for an Extension.

Air Quality Planning / Air Pollution Control * Action Item

3) Regulation R190-08: [BART] Best Available Retrofit Technology & Emission Limitations for Major Electric Generating Units: This regulation was heard and approved by the State Environmental Commission at their November 12, 2008 meeting. It is being reconsidered to correct a minor error in one of the tables. This regulation adds a requirement for certain electric generating units to install best available retrofit technology and comply with emission limitations for NOx, SO2 and PM10. These requirements apply to Sierra Pacific Resources' Fort Churchill and Tracy Generating Stations in the Mason Valley and the Truckee River Basins, respectively. They also apply to Nevada Power Company's Reid Gardner Generating Station in the California Wash northeast of Las Vegas and to Southern California Edison's Mohave Generating Station near Laughlin. This proposed regulation is necessary to comply with the federal Regional Haze Regulations promulgated in July 1999 (64FR35714).

This regulation will have an economic impact on the regulated industry. In some cases, it requires the installation of new control technologies, an upgrade to existing controls and/or a switch to different fuel. In other cases, the requirements coincide with what is required under existing permit conditions, and so the regulation will impose no additional cost. The proposed regulation will have no economic effect on the public, unless the industry chooses to pass the cost along to the consumer. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap, duplicate or conflict with any regulations of other government agencies. The regulation does not address fees.

Waste Management * Action Item

4) Regulation R153-08: Adopt by Reference Changes to the Federal Hazardous Waste Regulations: This regulation would amend NAC 444. The proposed regulation would adopt by reference changes to the federal hazardous waste regulations through July 1, 2008. Proposed changes include the revision to an existing exclusion from the definition of solid waste (and thus from regulation as hazardous waste) for recycled oil bearing hazardous secondary materials and clarifications to previously approved air pollution regulations.

This regulation will not have an immediate or long-term adverse economic impact on the public or the business community. There is no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap, duplicate or conflict with any regulations of other government agencies. The regulation does not address fees.

Other SEC Business

5) Motion to Vacate and Reset Hearing on Petition: Declaratory Order and Advisory Opinion * Action Item

On January 08, 2009 a non-profit organization named Amargosa Citizens for the Environment's ("ACE") petitioned the State Environmental Commission ("SEC") for a declaratory order and advisory opinion. See Agenda Item 6, below, for a description of the petition. On January 23, 2009, Rockview Farms, owner and operator of Ponderosa Dairy, filed a motion to vacate and reset the February 11 hearing to consider ACE's petition because its representative, Assemblyman Ed Goedhart, is unable to attend the February 11 hearing due to his legislative responsibilities.

6) Petition: Declaratory Order and Advisory Opinion * Action Item

On January 08, 2009 a non-profit organization named Amargosa Citizens for the Environment's ("ACE") petitioned the State Environmental Commission ("SEC") for a declaratory order and advisory opinion. The petition was submitted under the SEC "Rules of Practice" as codified under Nevada Administrative Code (NAC) 445B.888. This regulation allows any member of the public to petition the SEC for a declaratory order or an advisory opinion as to "the applicability of any statutory provision, Commission regulation or decision." The regulation requires the SEC to issue a written response within 30 days.

The petition by ACE expresses concern about the threat to groundwater posed by confined animal feeding operations. The petition requests the SEC to issue a declaratory order on three issues: (1) the Director of the Department of Conservation and Natural Resources should use the powers allocated to the Director in NAC 445A.250(1) to "reasonably require" that all existing wells in close proximity to Ponderosa Dairy, a confined animal feeding operation, be monitored for pollutants and degradation of water quality; (2) the Director of the Department of Conservation and Natural Resources should use the powers allocated to the Director in NAC 445A.250(1) to "reasonably require" that a groundwater monitoring program should be instituted at Ponderosa Dairy in a manner so as to detect the movement of contaminants from the operation of the dairy; and (3) sewage as defined in NAC 445A.107 includes dairy feedlots.

ACE also requested the SEC to issue an advisory opinion to confirm that in accordance with the duties described in the Nevada Water Pollution Control Act, comprehensive groundwater monitoring is the only way to adequately protect groundwater because it would allow regulators the ability to track pollution from an entire facility and assures that "best management practices" are working.

7) Administrator's Briefing to the Commission (Non Action Item)

NDEP's Administrator will provide the Commission with an informational update about the LS Power permit as well as any new events associated with agency regulatory matters.

8) Public Comment * Non Action Items: (Public comment may be limited to ten minutes per person at the discretion of the chairperson; See AG Reference @ Pages 58 & 81) at <http://ag.state.nv.us/publications/manuals/omlmanual.pdf>

Additional Information: Copies of materials referenced in this agenda may be obtained by calling the Executive Secretary, John Walker at (775) 687-9308. The public notice and the text of materials for the meeting are also available on the State Environmental Commission website at: <http://www.sec.nv.gov/index.htm>

Persons wishing to comment on the proposed actions on this agenda may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. The SEC must receive written submissions at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the SEC may proceed immediately to act upon any written submissions.

Upon adoption of any regulation, the SEC, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This agenda has been posted at the following locations: the Bryan Building (901 South Stewart Street, Carson City, Nevada); the State Library and Archives in Carson City (100 Stewart Street); the offices of the Division of Environmental Protection in Las Vegas (2030 E. Flamingo Rd. Suite 230) and at the Nevada Department of Wildlife (1100 Valley Road, Reno, Nevada).

In addition, copies of this agenda have been deposited electronically at major library branches in each county in Nevada. This notice and the text of the proposed regulations are also available on the State Environmental Commission's website at: SEC.NV.GOV

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of John B. Walker, Executive Secretary, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, facsimile (775) 687-5856, or by calling (775) 687-9308, no later than 5:00 pm on February 04, 2009.