



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 June 17 2009

The State Environmental Commission (SEC) will hold a regulatory hearing on Wednesday, June 17, 2009 at 9:30 a.m. The hearing location is the Nevada Department of Wildlife's Conference Room A, 1100 Valley Road, Reno, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of the following regulatory petitions and related SEC business.

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 02/11/09 SEC hearing * Action Item
- 2) Settlement Agreements, Air Quality Violations *Action - Consent Calendar

Company Name

1. A & K Earth Movers (Churchill County)
2. Premier Chemicals, LLC (Nye County)
3. Bango Oil, LLC (Churchill County)

Corrective Action Regulation

3) Regulation R189-08: Leaking Underground Storage Tank and Corrective Action Regulations *Action Item: This regulatory petition revises the Underground Storage Tank regulations and the Corrective Action regulations that address environmental site cleanups. These regulations are contained in the Nevada Administrative Code at NAC 459.9921 to 459.999 and NAC 445A.226 to 445A.22755 respectively.

The proposed regulations consolidates cleanup requirements for hazardous substance, hazardous waste, or regulated substance released from underground storage tanks and all other release sources. The regulations also make revisions to site assessment procedures to accommodate all types of releases from minor incidents to large sites with long operational histories of potential releases. The regulations better define abatement actions and they refine soil action levels to include consideration of all potential exposure pathways. Detail has been added in the regulations to address requests for exemptions from groundwater corrective actions. The regulations also seek to clarify the transition from Underground Storage Tank compliance requirements, to the initiation of a Leaking Underground Storage Tank cleanup case.

The regulations 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.

Air Pollution Control / Air Quality Planning Regulation

4) Temporary Regulation T036-09 *Action Item: The Nevada Division of Environmental Protection (NDEP) is proposing to update NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." NDEP is proposing to adopt into state regulation sections of the federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since the NAC was last updated, as well as certain test methods.

These proposed amendments are necessary so that Nevada can request delegation for the implementation of new and revised federal NSPS and NESHAP rules that became effective after March 2008. This update will allow the regulated industry to continue to work with the state as opposed to the EPA. Additionally, adopting the test methods will allow the NDEP to use methods approved by EPA and recognized by the scientific community to measure emissions from sources.

The regulations 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) Update by the Division of Environmental Protection on Nevada Wood Preserving Plant concerning odors * Non Action Item

6) Mining Industry Mercury Petition *Action Item: The Nevada Mining Association (NvMA) has submitted a petition under NAC 445B.886 requesting the State Environmental Commission (SEC) to direct the Nevada Division of Environmental Protection (NDEP) to initiate rulemaking to evaluate the Nevada Mercury Air Emissions Control Program codified under NAC 445B.3611 to NAC 445B.3689.

Specifically, NvMA requests that NDEP be directed to (1) evaluate the implications of EPA's decision to promulgate a federal MACT (Maximum Achievable Control Technology) for the gold mining industry on the Nevada

Mercury Control Program (NMCP), including evaluation of the need for a stay of Nevada Maximum Achievable Control Technology (NvMACT) determinations; and (2) report back to the SEC at its next regularly scheduled meeting in October 2009 with recommendations on a path forward.

The basis for the request stems from recent actions taken by the U.S. Environmental Protection Agency (EPA) to promulgate separate federal mercury emissions control standards that may conflict with NDEP's mercury emissions control program. The EPA's intent is to publish its final rule in September 2010.

7) Petition: Declaratory Order regarding definition of sewage in NAC 445A.107 *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 on four issues as allowed under 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 SEC considered ACE's petition¹ on February 11, 2009 and issued a "partial" decision on three of the four issues on March 9, 2009.² Petition Issue 3(c), which was deferred at the February 09, 2009 SEC hearing, is now being considered. Petition Issue 3(c) pertains to the definition of sewage as contained in NAC 445A.107. ACE's petition requests the Commission to issue a declaratory order that sewage as defined in NAC 445A.107 includes dairy feedlots.

8) Proposed Policy to improve Adjudication of Appeals Filed with the State Environmental Commission (SEC): *Action Item: To advance disposition of appeals of final decisions, such as enforcement actions and permits issued by the Nevada Division of Environmental Protection (NDEP), SEC counsel and staff are recommending that a Position Statement be required. The Position Statement is proposed in part to augment information now provided on SEC form 3, which is currently used to request an appeal hearing before the SEC by parties initiating appeals (appellants).

The SEC currently has the option pursuant to NAC 445B.8925 to order that briefs be filed before or after an appeal hearing. Formal briefs, however, can be viewed as onerous for individuals who elect not to be represented by counsel during the appeal hearing process. A Position Statement should be not as onerous. A Position Statement would assist all parties prepare their cases for the hearing. Requiring Position Statements under the authority of NAC 445B.8925 is proposed as a policy option to be exercised by the chairman of an appeals panel.

¹ <http://sec.nv.gov/main/ponderosa09.htm>

² http://sec.nv.gov/appeal_docs/sec_decision_2-11-09.pdf

In addition to Form 3 noted above, a Position Statement would at a minimum include (1) a statement of issues to be raised, (2) a list of witnesses and a brief summary of their proposed testimony, (3) the specific legal authority involved in the appeal, and (4) all documents to be introduced as evidence at the appeal hearing. A Position Statement would be filed by the appellants at least 14 days before the scheduled hearing and by the intervening parties and NDEP at least 7 days before the scheduled hearing. The chairman of an appeals panel could modify this schedule.

It is further proposed that the concept of the "Position Statement" be incorporated in the next revision to SEC's Rules of Practice (NAC 445B.875).

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

NDEP's Administrator will provide the Commission with an informational update about recent legislation of interest to NDEP enacted by the Nevada Legislature.

10) 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://sec.nv.gov/main/hearing_061709.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 June 09, 2009.