



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 October 5, 2011

The State Environmental Commission (SEC) will hold a regulatory hearing on Wednesday, October 5, 2011 at 9:30 a.m. at 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 may be taken out of order and/or items may be combined for consideration. Items may also be removed from the agenda or the SEC may delay discussion relating to an item on the agenda at any time. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the SEC may refuse to consider public comment. See NRS 233B.126

1.) Public Comments: (Discussion)

Members of the public will be invited to speak before the SEC; however, no action may be taken on a matter during public comment until the matter itself has been included on an agenda as an item for possible action. Public comment may be limited to ten minutes per person at the discretion of the chairperson.

2.) Approval of the Agenda: (For Possible Action)

3.) Approval of minutes for the June 16, 2011, SEC Regulatory Hearings: (For Possible Action)

4.) Penalty Assessments for Air Quality Violations:

- A. **EP Minerals, LLC** – Penalty Assessment for Air Quality Violation No. 2356; failure to comply with permitted emission limits set forth in Class II Air Quality Operating Permit. Recommended penalty \$1,500.00. (For Possible Action)
- B. **Rees's Enterprise** – Penalty Assessment for Air Quality Violation No. 2328: Failure to operate required air pollution controls by not having wet dust suppression on system hooked up. Recommended penalty \$600.00. (For Possible Action)

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- C. **Wulfenstein Construction** – Penalty Assessments for Air Quality Violation Nos.: 2347 & 2348: Failure to operate required air pollution controls by having excess emissions: failure to control emissions by not having wet dust suppression-water sprays in operations. Recommended penalty \$13,020.00. (For Possible Action)

5.) Petition for Variance: Regional Transportation Commission of Southern Nevada (RTC): (For Possible Action)

The Regional Transportation Commission of Southern Nevada (RTC) is requesting a one year variance from the use of alternative fuel for its transit fleet vehicles as allowed under NAC 486A.200(1)(b). The variance would allow the RTC to use diesel fuel for Fixed Route and Paratransit services in 511 vehicles instead of using a diesel alternative such as the B5 biodiesel fuel they currently use.

In approving variances, the Commission may consider whether compliance with NRS 486A/NAC 486A) would: (1) void or reduce the coverage under a manufacturer's warranty for any vehicle or vehicle component; (2) result in financial hardship to the owner or operator of a fleet; (3) be impractical because of the lack of availability of clean vehicles, alternative fuel or motor vehicles that use alternative fuel; or any other reason which the Commission determines is appropriate.

In making application to the Commission for a variance, the RTC has completed SEC Form #6. In its application the RTC cites financial hardship as the principal reason for the requested one year variance from the use of alternative fuel.

Regulatory Petition: Bureau of Waste Management

6.) R030-11: Biennial Reports by Generators of Hazardous Waste: (For Possible Action)

The Nevada Division of Environmental Protection (NDEP) is proposing to delete NAC 444.8675. This state regulation presently requires biennial reporting of hazardous waste; however, this reporting is more stringent than federal requirements. While federal regulations require only large quantity generators to submit biennial reports, State regulations require any generator holding an active USEPA identification number to report. Accordingly, by deleting this reporting requirement, State regulations would be consistent with federal requirements and thereby reduce the regulatory burden on businesses generating small quantities of hazardous waste in Nevada.

This regulation will not have an immediate or long-term adverse economic impact on the public or the business community. There will be no additional costs 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.

Regulatory Petition: Bureau of Waste Management

7.) R031-11: A Regulation Relating to Hazardous Waste: (For Possible Action)

This proposed regulation deletes NAC 444.8752 through NAC 444.8788, inclusive. These regulations establish provisions for a grant program to demonstrate methods and technologies for minimizing the generation of hazardous waste. Because these grants were issued in the 1990's and no new grants have been awarded for over 10 years and none are planned in the foreseeable future, the Nevada Division of Environmental Protection is proposing to delete the authority for these grants as established in the above referenced state regulations.

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

Regulatory Petition: Bureau of Air Pollution Control

8.) R006-11: Air Pollution Control New Public Notice Provisions For Class II Air Permits: (For Possible Action)

The Nevada Division of Environmental Protection (NDEP) is proposing to amend one section in the air permitting provisions of NAC 445B, which deals with Class II permit applications. This proposed permanent regulation was adopted by the SEC as a temporary regulation on December 7, 2010. It addresses public noticing requirements and the timeline for agency action on applications.

Specifically, the regulation streamlines the public notice timeline for Class II applications by requiring the Director to act on all Class II permit applications within 60 days after the official date of submittal. It further requires all new Class II air permit applications and all applications for a modification (to an existing Class II source) that exceeds a certain threshold be made available for public notice. These regulatory changes respond to US EPA comments on the approvability of the NDEP's public notice provisions into Nevada's applicable State Implementation Plan. The proposed permanent amendments are necessary to align state regulations with the federal Clean Air Act and US EPA rule requirements.

This permanent regulation will not have an immediate or long-term adverse economic impact on the public or the business community. The regulation does not overlap, duplicate or conflict with any regulations of other government agencies. There will be additional costs to the NDEP to administer the new public notice provisions for all new permit applications and for all modifications that exceed specified thresholds. The agency will bear these costs, at this time; no new fees are being proposed.

Regulatory Petition: Bureau of Air Pollution Control

9.) R014-11: Air Pollution Control New Class IV (Area Source) Permitting Program; Class II Certification Requirements: (For Possible Action)

The Nevada Division of Environmental Protection (NDEP) is proposing to adopt the federal National Emission Standards for Hazardous Air Pollutants rules for area sources that have recently been issued by the US EPA. This proposed permanent regulation was adopted by the SEC as a temporary regulation on June 16, 2011. The regulation will implement emission standards through a new, streamlined Class IV Operating Permit program. The agency's intent is to keep the program as simple as possible and require no more than what is federally mandated at minimal cost to industry.

By way of background, US EPA has identified 33 toxic air pollutants that pose the greatest threat to public health in urban areas pursuant to Clean Air Act requirements. Thirty of these are identified as being emitted from smaller industrial sources known as "area" sources. "Area" sources are those sources that emit less than 10 tons annually of a single hazardous air pollutant (HAP) or less than 25 tons annually of a combination of HAPs. US EPA has identified 70 source categories that emit 90 percent of the HAP emissions from area sources. Between December 2007 and August 2010, US EPA issued 16 new or revised NESHAP that may impact area sources in Nevada. The Class IV Operating Permit program will assist Nevada businesses in understanding and complying with the recent series of area source rules issued by US EPA.

In addition, and in accordance with Executive Order 2011-01, this proposed permanent regulation will remove the requirement for Class II permits to contain a compliance certification. Federal air quality regulations require only Title V permits to contain compliance certifications. The NDEP's Class II permits contain other mechanisms such as routine facility inspections and requirements to keep process records to demonstrate compliance.

This regulation will not have an immediate or long-term adverse economic impact on the public or the business community. There will be additional staff time required for enforcement of the proposed

regulation; however, the agency will use existing resources initially and will review workload needs over the next 12-24 months.

The regulation does not overlap, duplicate or conflict with any regulations of other government agencies. Regarding fees, NDEP is proposing a fee reduction for sources that will be subject to US EPA's area source NESHAP. If the regulation is not adopted, owners or operators of area sources would be subject to the current Class II application fee of \$3000 and an annual fee ranging between \$1000 and \$5000 per year, depending on the level of emissions. This regulation proposes a \$50 permit application fee and an annual maintenance fee of \$50. These regulations will ensure compliance with the new federal regulations but minimize the impact to the regulated community by streamlining the permit processing timeline and reducing associated costs.

Regulatory Petition: Bureau of Air Pollution Control

10.) RO15-11: Air Pollution Control Adopt by Reference; Greenhouse Gas Permitting: (For Possible Action)

The Nevada Division of Environmental Protection (NDEP) is proposing to update the agency's adoption of the federal "prevention of significant deterioration of air quality" (PSD) rule to include US EPA's greenhouse gas (GHG) permitting requirements. This proposed permanent regulation was adopted as a temporary regulation by the SEC on the June 16, 2011. Without this adoption, US EPA would be the primary PSD permitting authority for sources in Nevada.

In this regulation NDEP is also proposing to update NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." With the exception of National Emission Standards for Hazardous Air Pollutants (NESHAP) for area sources, which are being proposed for adoption in R014-11 (noted above), this regulation proposes to adopt applicable sections of the federal New Source Performance Standards (NSPS) and NESHAP rules that have been issued by the US EPA since July 1, 2009. Adoption of this permanent regulation would allow the regulated industry to continue to work with the State rather than US EPA to comply with the new rules.

The regulation does not overlap, duplicate or conflict with any regulations of other government agencies. This regulation will not have an immediate or long-term adverse economic impact on the public. With respect to economic impacts on the regulated industry, the NDEP is proposing to retain the current fee for PSD and Title V permit applications. The NDEP is also proposing to retain the annual permit maintenance fee, but exclude GHG's from the annual emissions fee. Existing Class I sources will not see a change in annual fees due to GHGs.

However, Class II sources that become subject to the Title V or PSD permitting requirements because of GHG emissions will be subject to the higher Class I fees.

NDEP Air Quality Planning & Nevada Dept. of Motor Vehicles

11.) RO39-11: Motor Vehicle Emissions Inspection and Maintenance Program: (For Possible Action)

Nevada Revised Statutes (NRS) 445B.760 establishes the authority for the State Environmental Commission (SEC) to prescribe standards for emissions from mobile internal combustion engines. The authority under this section includes the authority to provide for the exemption from such standards of a vehicle for which special license plates have been issued to certain older motor vehicles.

The NDEP is proposing to amend State regulations for the motor vehicle emissions inspection and maintenance program. Specifically, the proposed amendment to NAC 445B.6115 would exempt vehicles that have been issued special license plates from emissions testing requirements.

The categories receiving the exemption are, Antique Vehicles, Street Rods, Classic Rods, and Classic Vehicles, as defined by NRS 482.381, 482.3812, 482.3814, and 482.3816 respectively. The proposed regulation would allow the exemption to be granted only if the owner certifies that the vehicle was not driven more than 5000 miles annually. This change is being proposed pursuant to the passage of AB2 by the 2011 Nevada Legislature.

This regulation will not have a significant immediate or long-term adverse economic impact on the public or the business community. There will be no additional costs 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.

12.) Administrator's Briefing to the Commission: NDEP's Administrator will provide the Commission with a briefing about NDEP's "Review of Regulations" as required by Gubernatorial Executive Order 2011-01 as well as NDEP's Lake Tahoe Total Maximum Daily Load - TMDL Report. (Discussion)

13.) Public Comments: (Discussion) Members of the public will be invited to speak before the SEC; however, no action may be taken on a matter during public comment until the matter itself has been included on an agenda as an item for possible action. Public comment may be limited to ten minutes per person at the discretion of the chairperson.

14). Adjournment:

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this agenda will be posted no later than three working days prior to the hearing at the following locations:

- Nevada State Library & Archives, 100 N. Stewart St., Carson City, NV;
- Dept. of Conservation & Natural Resources, 901 South Stewart Street, Carson City, Nevada);
- Nevada Division of Environmental Protection in Las Vegas, 2030 E. Flamingo Rd;
- Nevada Department of Wildlife in Reno, 11 Valley Road.

In addition, copies of this agenda have been deposited electronically at major library branches in each county in Nevada. This agenda and the text of the proposed regulations are also available on the State Environmental Commission's website at: http://www.sec.nv.gov/main/hearing_1011.htm . All of the proposed regulations denoted in this notice, including previous drafts, are or will be posted on the Legislative Counsel Bureau's website at: <http://www.leg.state.nv.us/register/> .

Persons wishing to comment on the proposed actions of the State Environmental Commission (SEC) 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.

Members of the public can inspect copies of the regulations to be adopted at the State Library and Archives in Carson City (100 Stewart Street), and at the offices of the Division of Environmental Protection in Carson City and Las Vegas. The Carson City office is located at 901 South Stewart Street, Suite 4001 and the Las Vegas office is located at 2030 E. Flamingo Rd. Suite 230.

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 p.m. on September 27, 2011.