



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

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

SEC Meeting Agenda February 15, 2012

The State Environmental Commission (SEC) will hold a regulatory hearing on Wednesday, February 15, 2012 at 9:00 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 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:

- A. October 05, 2011 Meeting (For Possible Action)
- B. November 07, 2011 Meeting (For Possible Action)

4.) Penalty Assessments for Air Quality Violations:

- a. **Refuse Inc.** -- Penalty Assessments for Air Quality Violation No. 2330; failure to comply with asphalt plant throughput rate limit as required by Class I Air Quality Operating Permit AP4953-1148.01. Recommended penalty \$28,000 (For Possible Action)
- b. **California Rock Crusher Corp** -- Penalty Assessments for Air Quality Violation Nos. 2380 and 2381; failure to comply with permitted monitoring recordkeeping and throughput requirements set forth in Class

Il Air Quality Operating Permit AP1422-2740 COLA 2245. Recommended penalty \$5,400 (For Possible Action)

5.) Unopposed Petition for a Declaratory Order: (For Possible Action)

On November 8, 2011 the Sierra Club and Moapa Band of Paiutes filed an Unopposed Petition for a Declaratory Order. The petition requests the SEC to rule on whether it has jurisdiction to hear the Sierra Club and Moapa Band of Paiutes' appeal concerning Permit No. LF006-CMF-01 issued by the Southern Nevada Health District to NV Energy on September 9, 2011 for an expansion of the coal ash landfill at Reid Gardner Station in southern Nevada.

Regulatory Petition: Bureau of Waste Management

6.) R049-11: Recycling Services at Apartment Complexes and Condominiums (For Possible Action)

This proposed permanent regulation addresses revisions to standards for municipal recycling at apartment complexes and condominiums as required by SB417. Under existing law (NRS 444A.010 to 444A.050), Nevada counties are required to provide for recycling services. The level of service required is dependent on the population of the county.

Counties with populations of 100,000 or more must provide for curbside collection of recyclables. Counties with populations of 45,000 to 100,000 must provide for recycling centers where recyclable material may be dropped off, and counties with populations of less than 45,000 may provide services if they choose to, but are not required to do so. Services provided by counties must conform to minimum standards established in regulation by the State Environmental Commission.

To implement SB417, the Division is proposing minor amendments to existing regulations to require that recycling services be made available to apartment complexes and condominiums; however, the regulation does not mandate that apartment complexes and condominiums, or multi-family dwellings (MFDs), participate in recycling programs. Following the structure in the existing statute, new regulatory provisions relating to recycling services at apartment complexes and condominiums will only apply in counties with populations of 100,000 or more. Accordingly, these regulations are designed to provide additional opportunity for residents of apartment complexes and condominium complexes to recycle.

Where there is an increased participation in recycling programs or services, this regulation may lead to financial impacts on certain small businesses, such as recycling haulers or property management businesses that choose to provide recycling services. Moreover, inclusion of MFD

recycling services in contract agreements could increase disposal fees for the residents of apartment and condominium complexes that take advantage of this service.

There will be no additional costs to the agency for enforcement of the proposed regulation and the regulation is necessary to implement the provisions of SB417. There are no alternate forms of this regulation and the regulation does not overlap, duplicate or conflict with any regulations of other government agencies. The proposed regulation does not address fees. (SEC #P2011-06)

Regulatory Petition: Bureau of Waste Management - continued

7.) R123-11: A Regulation Relating to Solid Waste: (For Possible Action)

This proposed permanent regulation would amend NAC 444.748. The regulation clarifies the jurisdictional responsibilities associated with appeals concerning the management and disposition of solid waste by Nevada's three Solid Waste Management Authorities. The regulation makes clear that only those appeals involving a decision by the Division of Environmental Protection will be heard by the State Environmental Commission.

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 and it is essential to the functions and operations of the Nevada Division of Environmental Protection and the State Environmental Commission.

Regulatory Petition: Bureau of Corrective Action

8.) R052-11: A Regulation Relating to Underground Storage Tanks: (For Possible Action)

This proposed regulation establishes an operator training component for the Nevada Division of Environmental Protection's (NDEP) underground storage tank program. The basis for the regulation falls under the provisions of Section 9010a of the federal Solid Waste Disposal Act (SWDA) as amended by the Energy Policy Act of 2005. The proposed regulation would amend NAC 459.9921.

Once implemented the revised regulation is aimed at reducing underground storage tank releases to the environment. Operator training requirements are intended to ensure that those persons responsible for the operation of an underground storage tanks have received proper training in all relevant aspects of operation, maintenance, and

regulation of underground tanks. The proposed regulation makes a distinction between three types of operators.

In order to continue to receive federal funds under Subtitle I of the SWDA, implementing agencies (such as NDEP) are required to enact program changes to institute an operator training element as part of their tank program.

In terms of potential costs, satisfaction of the operator training requirements in the proposed regulation for Class A and Class B operators could involve costs for participation in approved programs offered by independent companies or groups. Costs for these courses, as surveyed from other states that have already instituted operator training programs in a manner similar to this proposed regulation, can range from \$75 to \$150 per operator.

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. This regulation is necessary to comply with federal law and it is essential to the functions and operations of the Nevada Division of Environmental Protection. (SEC #P2011-07)

Regulatory Petition: Bureau of Air Pollution Control

9.) R129-11: A Regulation Relating to Air Pollution Control: (For Possible Action)

The regulation updates NAC 445B.221, “Adoption by reference and applicability of certain provisions of federal law and regulations.” The regulation adopts into state regulation certain federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the US Environmental Protection Agency and published in the Federal Register since July 2010. In addition, this amendment will update the Division of Environmental Protection’s adoption of federal Prevention of Significant Deterioration (PSD) rules relating to fine particulate matter.

The regulations also propose to repeal two regulations: the definition of “Ringelmann Chart” and the exceptional event provisions. The term Ringelmann Chart is not used in NAC Chapter 445B, and the exceptional event provisions are duplicative of the federal regulation.

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 also

does not address fees. This regulation is necessary to comply with federal law and it is essential to the functions and operations of the Nevada Division of Environmental Protection. (SEC #P2012-01)

Regulatory Petition: State Environmental Commission

10.) R135-11: Rules of Practice, State Environmental Commission: (For Possible Action)

As allowed under NRS 233B.050, this regulation updates NAC 445B.875 to NAC 445B.895, the section governing practice before the State Environmental Commission (Commission) in contested cases (NRS 233B.121). The proposed regulation requires that an appeal be based on the standard of review grounds set forth in NRS 233B.135(3); it clarifies briefing, witness and exhibit requirements; it establishes procedures for prehearing conferences; it limits the type of evidence heard by the Commission during the appeal hearing; it allows dismissal of appeals in certain circumstances; and it clarifies the status of attorneys allowed to appear before the Commission in contested cases.

This regulation is designed to reduce the time and resources needed to conduct appeals by the Commission. The regulation will also reduce the backlog of outstanding appeals by allowing the Commission, after appropriate notice, to dismiss appeals in cases where no actions have been taken for over a year. In addition, by clarifying the standard of review, defining procedures for briefs, and addressing the admission of evidence during appeal hearings, the proposed regulation would streamline the appeal process for all parties, including Nevada business. Finally, requiring attorneys to be licensed in Nevada or associated with a Nevada licensed attorney, as is required in state court litigation, would ensure that attorneys are knowledgeable about the administrative hearing procedures defined under NRS 233B.

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 Commission 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 and it is essential to the functions and operations of the State Environmental Commission. (SEC #P2011-08)

11.) Administrator's Briefing to the Commission:

NDEP's Administrator will brief the Commission about recent personnel changes at NDEP as well as implementation of Executive Order 01 as recently directed by Governor Sandoval's office. (Discussion)

-- More --

12.) 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.

13). Adjournment:

Additional Information: 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: SEC.nv.gov. 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 February 7, 2012.