



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 16, 2011

The State Environmental Commission (SEC) will hold a regulatory hearing on Thursday, June 16, 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.

1) Approval of minutes for 12/7/2010, SEC Regulatory Hearings * Action Item

2) Penalty Assessments for Air Quality Violations * Action Items (A through K)

- A. Road and Highway Builders, LLC – Penalty Assessments for Air Quality Violation Nos. 2259, 2260, 2261 and 2272: failure to control fugitive dust, failure to comply with permitted emission limits, failure to comply with permitted operation limits on 16 different days, and failure to operate required emission controls (wet dust suppression). Recommended penalty \$94,800.00.
- B. Wendover Nugget Hotel and Casino – Penalty Assessments for Air Quality Violation Nos. 2265, 2266, 2267 and 2310: operating without a valid air quality operating permit, failure to monitor and record daily operating records, operating an un-permitted boiler unit, and failure to comply with NDEP Compliance Order 2010-16. Recommended penalty \$19,400.00.
- C. Paramount NV Asphalt – Penalty Assessments for Air Quality Violation No. 2273: failure to comply with certain requirement for recordkeeping, monitoring, reporting or compliance certification contained in Class II Air Quality Operating Permit AP5032-2054 (FIN A0508). Recommended penalty \$5,400.00.
- D. American Assay Laboratories – Penalty Assessments for Air Quality Violation No. 2283: failure to apply for and receive a modified air quality operating permit prior to replacing and/or installing additional equipment as per Class III Air Quality Operating Permit AP8734-2232 (FIN A0585). Recommended penalty \$1,600.00.

- E. Graymont Western US Inc. – Penalty Assessments for Air Quality Violation No. 2288: failed compliance source test associated with Class I Air Quality Operating Permit AP3274-1329.01 (FIN A0367). Recommended penalty \$9,900.00.
- F. Staker & Parson – Penalty Assessments for Air Quality Violation Nos. 2289 and 2298: failure to operate crushing and screening plant within production limits as per Class II Air Quality Operating Permit AP1442-0017 (FIN A0033), and operating prior to the issuance of a Change of Location Approval (COLA) # 2236. Recommended penalty \$1,600.00.
- G. Frehner Construction Company – Penalty Assessments for Air Quality Violation Nos. 2292 and 2294: failure to comply with the opacity limit for emissions from the asphalt plant’s drum mixer wet scrubber stack as per Class II Air Quality Operating Permit AP1422-0037 COLA 2218 (FIN A0006). Recommended penalty \$18,720.00.
- H. Saga Exploration Co. Barth Iron Mine – Penalty Assessments for Air Quality Violation No. 2296: failure to obtain an air quality permit within specified timeframe. Recommended penalty \$3,200.00.
- I. Rodeo Creek Gold, Inc. – Penalty Assessments for Air Quality Violation No. 2297: failure to construct or operate a stationary source in accordance with conditions of operating permit P1041-1298-.01 (FIN A0006). Recommended penalty \$11,760.00.
- J. Heart of Nature, LLC – Penalty Assessments for Air Quality Violation No. 2315: failure to install and operate required air pollution controls as per Class II Air Quality Operating permit AP1442-2681 (FIN A1116). Recommended penalty \$600.00.
- K. Min-Ad, Inc. – Penalty Assessments for Air Quality Violation No. 2322: failed compliance source test as per Class II Air Quality Operating Permit AP2048-0381 (FIN A0495). Recommended penalty \$3,230.00.

Air Quality Planning/ Air Pollution Control * Action Item

3) T008-11: Air Pollution Control New Class IV (Area Source) Permitting Program; Class II Certification Requirements: 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 United States Environmental Protection Agency (US EPA). The emission standards will be implemented 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 temporary regulation would 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 \$3,000 and an annual fee ranging between \$1,000 and \$5,000 per year, depending on the level of emissions. This regulation proposes a \$50 permit application fee, which is good for five years, 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 the associated costs (SEC #P2011-02).

Air Quality Planning/ Air Pollution Control - continued * Action Item

4) T009-11: Air Pollution Control Adopt by Reference; Greenhouse Gas Permitting: 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 the United States Environmental Protection Agency’s (US EPA) greenhouse gas (GHG) permitting requirements. Without this adoption, US EPA would be the primary PSD permitting authority for sources in Nevada.

Additionally, this temporary regulation would revise the definitions of “regulated air pollutant” and “major source” to ensure that the higher GHG applicability thresholds in the federal rule apply in Nevada’s Title V permitting

program. If the State were to implement the federal GHG permitting requirements without revising these definitions, the NDEP would be required to issue GHG permits to sources that emit more than 100 or 250 tons per year of GHGs, depending on source type, potentially affecting thousands of small businesses statewide.

The NDEP is also proposing to update NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations," in this regulation. With the exception of National Emission Standards for Hazardous Air Pollutants (NESHAP) for area sources, which are being proposed for adoption in P2011-02, 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 temporary regulation would allow the regulated industry to continue to work with the State rather than US EPA to comply with the new rules.

This temporary 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. Regarding fees, 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 GHGs 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 (SEC #P2011-01).

Public Petition by Kids vs. Global Warming: *Action Item

5) Petition to Limit Fossil Fuel Carbon Dioxide Emissions: This petition, submitted by Petitioner Kids vs. Global Warming, requests that the State Environmental Commission (SEC) enact a proposed regulation to limit fossil fuel carbon dioxide emissions and to establish an emissions reduction strategy that would achieve atmospheric concentrations of carbon dioxide no greater than 350 parts per million by the year 2100. The petition was submitted to the SEC pursuant to NRS 233B.100 and/or NAC 445B.886.

Among other requirements, the proposed regulation calls for the reduction of carbon dioxide emissions from fossil fuels within Nevada's borders. Such emissions would peak in 2012 and then starting in January 2013 would be reduced by at least 6 percent per year. The proposed regulation would further require the SEC to adopt a greenhouse gas reduction plan to achieve the above referenced CO₂ limits. Statewide annual progress reports on greenhouse gas emissions would then be published annually and would include an accounting and inventory for each and every source of all greenhouse gas emissions within the state.

In the petition, three primary reasons are given for the need and purpose of the proposed regulation: (1) science unequivocally shows that anthropogenic climate change is occurring and is threatening the stability of the global climate; (2) climate change is already occurring in the state of Nevada and is projected to significantly impact Nevada in the future; and (3) the public trust doctrine demands that the state of Nevada act to preserve the atmosphere and provide a livable future for present and future generations.

While Petitioner reports the economic effect of the regulation on Nevada business “cannot easily be calculated,” it notes that promulgation of such a regulation would prevent economic harm to many sectors of the Nevada economy, including ranchers, farmers, and the tourism industry, by preventing catastrophic damage to Nevada’s natural environment. Likewise Petitioner notes that the estimated economic effect on the public cannot easily be calculated, yet the regulation would help secure Nevada’s water resources and preserve livelihoods that depend on the health of Nevada’s natural environment. Regarding cost to enforce the regulation, once again Petitioner states it could not be easily calculated because the regulation provides the SEC with discretion as to how it will choose to reduce greenhouse gas emissions.

Petitioner states that the proposed regulation does not overlap other regulations concerning carbon dioxide emissions; however, Petitioner notes the proposed regulation would be more stringent than any federal regulations, since no federal regulations currently restrict carbon dioxide emissions. Finally, Petitioner notes that the proposed regulation would not establish a new fee or increase existing fees.

Other SEC Business

6) Administrator's Briefing to the Commission: Non-Action Item

NDEP's Administrator will provide the Commission an informational update on the effect of Governor Brian Sandoval's Executive Order 2011-01 as amended. The order established a freeze on certain proposed state regulations; it also orders each agency to complete a comprehensive review of regulations consistent with the Governor’s regulatory priorities for the protection of the health and welfare of Nevadans, without discouraging economic growth.

The Administrator will also brief the Commission about recent staff changes at NDEP as well as the impact of legislation by the 76th Session of the Nevada Legislature.

7) Public Comment: Non-Action Item

Public comment may be limited to ten minutes per person at the discretion of the Chairperson. (See AG Open Meeting Law Manual, pages 58 & 81, <http://ag.state.nv.us/publications/manuals/omlmanual.pdf>)

Additional Information: 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.

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, the public notice and this agenda for this hearing was posted at the following locations: the Bryan Building (901 South Stewart Street, Carson City, Nevada); the offices of the Division of Environmental Protection in Las Vegas (2030 E. Flamingo Rd., Suite 230), at the State Library and Archives building in Carson City (100 Stewart Street) and at the Nevada Department of Wildlife in Reno (11 Valley Road).

In addition, copies of this notice 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: <http://www.sec.nv.gov/index.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/>.

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 June 8, 2011.